

24 FEBRUARY 1947

I N D E X

of

DEFENSE

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1 Monday, 24 February, 1947

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4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

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12 Appearances:

13 For the Tribunal, same as before.

14 For the Prosecution Section, same as before.

15 For the Defense Section, same as before.

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17 The Accused:

18 All present except OKAWA, Shumei, who is
19 represented by his counsel.

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21 (English to Japanese and Japanese
22 to English interpretation was made by the
23 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT. The International
2 Military Tribunal for the Far East is now in ses-
3 sion.

4 THE PRESIDENT: Our attention has been
5 drawn to an article appearing in Stars and Stripes,
6 purporting to foreshadow the nature of the argument
7 which would be presented by defense counsel. That
8 article constitutes gross contempt of this court
9 and appropriate action may yet be taken unless some
10 explanation is forthcoming, together with some assur-
11 ance against any repetition of such articles.

12 Every court is obliged to consider two
13 things, and let them not be forgotten: first, the
14 security of the country, and secondly, the prestige
15 of the court itself. Both were utterly disregarded
16 in that article. A deputation for the defense as-
17 sured me this morning that the defense had no
18 responsibility. I did not think for one moment they
19 had. But the person or persons responsible are
20 invited to come to that lecturn with their apology
21 and assurance. Otherwise we shall take action.

22 I have another statement to make. This
23 court will not hear argument already heard. The
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1 new members of the court, those who did not hear the
2 argument on the motions going to jurisdiction and
3 constitution of the court, will rely upon the record;
4 but for the attitude of those members I, at all events,
5 should feel bound to allow the argument to be
6 repeated for their benefit, but they don't want to
7 hear it because it already appears in the record.
8 In fact, they have already read it for the purposes
9 of the motions which were dismissed last week,
10 motions by the defense for dismissal of the case
11 for the prosecution.

12 MR. HAYASHI: Mr. President, I am HAYASHI
13 Itano, director of publicity of the Japanese
14 defense. I should like to make a few remarks with
15 respect to the article just referred to by the
16 President in Stars and Stripes.

17 I wish to assure you, Mr. President that
18 the publicity department of the Japanese Defense
19 Corps, either as a department or as an individual,
20 has not made any such announcement. After seeing it
21 we feel it extremely regrettable that such an article
22 appeared in the Stars and Stripes. We should like
23 to investigate it -- into the course -- or the manner
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1 in which this article appeared in the Stars and
2 Stripes, and after full investigation we should
3 like to take all measures to prevent such an
4 occurrence in the future.

5 THE PRESIDENT: Mr. Logan.

6 MR. LOGAN: If the Tribunal please, the
7 defense is prepared to proceed.

8 MR. BRACKMAN: Mr. President, I am Arnold
9 Brackman, of the United Press, and I wrote that
10 article. However, every ethic in the newspaper
11 business, all ethics of journalism were broken when
12 that story was published. I had given an order to
13 have it killed. It was written by error. Every
14 newspaper followed those instructions except Stars
15 and Stripes.
16

17 One point further: It is a matter of a
18 newspaper device, but we also put on the story --
19 the correction of the story, which was issued a
20 number of -- about twelve hours before it was
21 written, an automatic release for 9:30, which was
22 also broken by Stars and Stripes.

23 One point further, Mr. President: I have
24 been covering the Tribunal for a number of months
25 and at no time have I ever attempted or tried in any

1 way to embarrass the Court or to in any way reflect
2 on the security of the Occupation itself.

3 THE PRESIDENT: Well, you are appearing here
4 as the writer of the offending article. As such
5 you are entitled to appear or to be represented by
6 counsel. Now we want to hear the editor of the paper
7 if he is available.

8 1ST LIEUT. J. THOMPSON: Mr. President,
9 the editor of the Stars and Stripes is not present
10 in Court. However, I can secure him for the Court
11 at your desire, sir.

12 THE PRESIDENT: He should appear immediately
13 after the mid-morning recess.
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1 THE PRESIDENT: Mr. Logan.

2 MR. LOGAN: If the Tribunal please, the
3 defense is prepared to proceed. In the preparation
4 of the general opening statement and the opening
5 statements of the various divisions of the defense
6 a serious effort has been made to state the facts
7 to be proven to the satisfaction of all the accused
8 and their counsel. They have been prepared so as
9 to inform the Tribunal of the general trend of the
10 evidence.

11 Due to conflicts of interests, differences
12 of opinion and the divergent official positions
13 held by the accused, it must be apparent to the
14 Court that it is impossible to do so completely.
15 Some of the accused and their counsel necessarily
16 take issue with some of the various statements of
17 facts, reasonings, philosophies, inferences and
18 complicities in the events as set forth in these
19 opening statements. It is, therefore, necessary
20 that the accused reserve to themselves the right
21 to present their different views of the facts in
22 their individual opening statements and in the
23 presentation of their individual cases.

24 The opening statement will be delivered
25 in two parts: Part One by Dr. KIYOSE and Part Two

1 by Dr. TAKAYANAGI; and, with the Court's permission,
2 Dr. KIYOSE will now present Part One.

3 THE PRESIDENT: Dr. KIYOSE. Mr. Tavenner.

4 MR. TAVENNER: Mr. President, Members of
5 the Tribunal, in view of the statement just made
6 by counsel I think it should appear of record for
7 whom and in whose behalf this opening statement is
8 made.

9 MR. LOGAN: As we explained, your Honor,
10 it is very difficult to set forth all the names
11 because some of the accused only object to part
12 of it. However, if the Court so desires, a state-
13 ment as requested by the prosecution will be made
14 upon the completion of the opening statement.

15 THE PRESIDENT: I take it to be the general
16 opening statement on behalf of all the accused,
17 whatever differences of opinion they may have.
18 We are not to hear more than one general opening
19 statement, that is clear, nor are we going to permit
20 the repetition of arguments already heard. If this
21 opening statement contains arguments already heard,
22 they must be deleted.

23 MR. LOGAN: If the Tribunal please, I
24 thought I made it clear. There are some accused
25 who disagree with this opening statement in its

1 entirely. There are some who disagree with it in
2 large part and some in small part. And if the
3 Tribunal desires, we will make a list of that
4 and present it upon completion of the opening state-
5 ment.

6 THE PRESIDENT: Such a list is desirable,
7 but I want to make it clear: We are not going to
8 hear more than one general opening statement.

9 MR. LOGAN: Only one general opening state-
10 ment is to be given.

11 THE PRESIDENT: It will not be general,
12 of course, if there are many of the accused standing
13 out.

14 Mr. Smith.

15 MR. SMITH: If your Honor please, I have
16 negative instructions from Mr. HIROTA to the effect
17 that he does not go along with the general opening
18 statement. Mr. HIROTA will rely on his own indi-
19 vidual opening statement to present his special
20 position in this case.

21 THE PRESIDENT: Let us have the list now,
22 Mr. Logan. We may decide not to hear this as a
23 general opening statement. There may not be a
24 sufficient number subscribing to it.

25 MR. LOGAN: If the Tribunal please, at the

1 present time I understand Mr. SHIGEMITSU, Mr. HIRA-
2 NUMA, Mr. HINOTA, Mr. DOMIHARA do not join in the
3 statement in its entirety. I understand that
4 Mr. SUZUKI also does not join. That is why I was
5 waiting until the completion of the statement until
6 we could get an entire list of those who do not
7 desire to join it; but I understand these five are
8 the only ones who do not join it in its entirety,
9 and that none of these accused intends to make any
10 general opening statement at this time. They are
11 reserving the right. It is the same way with all
12 the rest of the accused, to make their own opening
13 statements upon the presentation of their individual
14 cases towards the end of this entire trial.

15 THE PRESIDENT: What accused are entirely
16 opposed to it, Mr. Logan?

17 MR. LOGAN: Mr. SHIGEMITSU, Mr. HIRANUMA,
18 Mr. HINOTA, Mr. DOMIHARA, Mr. SUZUKI.

19 THE PRESIDENT: I thought you said they
20 did not accept it in its entirety. Some may have
21 rejected it completely.

22 MR. LOGAN: They are the five who reject
23 it in its entirety.

24 THE PRESIDENT: Mr. Warren.

25 MR. WARREN: Your Honor, I represent the

1 accused HIRANUMA and accused DONIHANA. We do not
2 subscribe to the opening statement in any respect,
3 and we merely want to ask the Tribunal's indulgence
4 in permitting us to reserve our opening statement.
5 We fully respect the right of the other counsel and
6 accused to make an opening statement peculiar to
7 themselves if they so desire. We do not intend to
8 attempt to make another general opening statement
9 on our own behalf. We shall consume no more of
10 the Tribunal's time than we would have done under
11 ordinary circumstances had we joined in the motion.
12 I thank your Honor.

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1 THE PRESIDENT: Who are the accused who
2 accepted in part only?

3 MR. LOGAN: We haven't any accurate list on
4 that, your Honor. There will be very few of them,
5 I understand.

6 THE PRESIDENT: Mr. Cunningham.

7 MR. CUNNINGHAM: If your Honor please, I
8 would like to reserve the right to object to certain
9 parts of the opening statement at the time we present
10 our individual case, but we do not want to be in the
11 position of objecting to the opening statement in toto.

12 THE PRESIDENT: Mr. Tavenner.

13 MR. TAVENNER: If it please the Tribunal, I
14 think we are entitled to know in whose behalf this
15 opening statement is being made. We are more interested
16 to know that than the names of those who disagree.

17 THE PRESIDENT: You should know, Doctor KIYOSE.

18 DOCTOR KIYOSE: As Mr. Logan has just made
19 clear, the defendants who do not agree, who do not join
20 in this opening statement are HIROTA -- are the accused
21 HIROTA, HIRANUMA, SHIGEMITSU, DOHIHARA and SUZUKI. The
22 remaining accused all join in this opening statement,
23 except for the accused OSHIMA, who, as Mr. Cunningham
24 has just stated, disagrees in part from this general
25 statement. But that part also is only one line.

1 I said one line, but counsel for OSHIMA reminds
2 me that there is more than one line to which he objects.

3 THE PRESIDENT: Proceed to read the opening,
4 Doctor KIYOSE, but be careful to omit any arguments
5 already put to the Tribunal.

6 MR. TAVENNER: The prosecution desires to
7 reserve the right to object to any phases of the
8 opening statement at the conclusion thereof should
9 they be advised it is proper to do so.

10 THE PRESIDENT: The defense were given that
11 right, Mr. Tavenner, and you will have it also.

12 The Court will recess for a few minutes.

13 (Whereupon, at 1005, a recess was
14 taken until 1016, after which the proceedings
15 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Doctor KIYOSE.

4 DOCTOR KIYOSE: I have just -- I completed
5 my draft and distributed it among -- to the Tribunal
6 and to other related parties. However, in line with the
7 President's recent ruling I shall omit from the first
8 line, beginning from the first line of page 14 to the
9 11th line of page 25 in the English text. This concerns
10 the jurisdiction of the Tribunal and ~~is~~ based on the
11 Potsdam Declaration and has already been argued. In
12 the Japanese text this corresponds to pages 38 to 40.
13

14 I made a mistake concerning the pages in the
15 Japanese text. I shall correct this later. The place
16 to be omitted is page 24, first line to the 11th line
17 line, page 25. However, there are several typographical
18 errors, so the correct statement will now be read by
19 myself and the Language Section through the IBM system.

20 THE INTERPRETER: Corrections concerning the
21 previous remark by Doctor KIYOSE: The pages to be
22 omitted are pages 24 to 25, from the first line of page
23 24 to the 11th line of page 25.
24
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1 DR. KIYOSE: Mr. President and Members of
2 the Tribunal: The time has now come for the accused
3 to present their defenses to the charges in the
4 Indictment and the proofs adduced by the prosecution
5 in support thereof.

6 The Tribunal has with great care listened
7 to the prosecution's case these many past months.
8 It has also with great indulgence permitted the
9 defense within the framework of its concept of a
10 fair and just trial to conduct its part of the case
11 with a tenor befitting the historical importance
12 of these proceedings. Needless to say, the defense
13 to be presented will proceed with the utmost expedi-
14 tion of which we are capable, hewing only to the
15 issues raised for decision. The task to be under-
16 taken by us is of such grave and novel import that
17 we must at the outset invite the Tribunal's forbear-
18 ance should we unwittingly stray from the standards
19 we have set for ourselves or should we deviate from
20 the precepts established by the Tribunal.

21 On 6 May 1945 the accused in open session
22 before this Honorable Tribunal pleaded not guilty to
23 all the counts and charges of the Indictment, except
24 the accused OKAWA. The defense will disprove each
25 and every charge of criminality lodged against them.

1 The allegations in the indictment are
2 divided into fifty-five counts. Many of them aver
3 one and the same allegations concerning the same
4 charges viewed from different angles and seem to
5 overlap. Some of the counts refer to all the
6 accused and others refer to but a few. If all the
7 accused here were to produce evidence individually
8 and separately on behalf of themselves one after
9 another against these numerous and diverse counts,
10 much repetition and confusion would be bound to
11 arise. So the defendants and their counsel have
12 come to an agreement that they will produce as far
13 as possible, evidence in common where the offences
14 charged are in common.

15 As a result of this arrangement, the proof
16 to be presented in common has been divided into the
17 following divisions and evidence will be produced
18 accordingly:

19 Division 1 -- General problems.

20 Division 2 -- Matters concerning Manchuria
21 and Manchoukuo.

22 Division 3 -- Matters concerning China.

23 Division 4 -- Matters concerning the
24 Soviet Union.

25 Division 5 -- Matters concerning the

1 Pacific War.

2 After the presentation of evidence in the
3 above divisions, each accused will from his own indi-
4 vidual standpoint offer evidence concerning himself.
5 It may be probable that since the interests, views
6 and actions of some of the accused were opposed to
7 each other, conflicting evidence will be presented.
8 In so doing some of the accused may, from their own
9 standpoint, demand exceptions to the facts and
10 evidence as adduced in the above five divisions or
11 may furnish other evidence in their individual
12 interest. This phase may for the sake of convenience
13 be called "Division 6. Individual cases or indi-
14 vidual defenses."

15 We shall now point out a few important
16 facts which will be dealt with under Division 1, and
17 explain the proposed method of presenting evidence.
18 Needless to say, the matters to be pointed out here
19 are but a part and not all of the matters to be dealt
20 with in Division 1, further remarks being reserved to
21 be made at the opening of that division. The same
22 can be said with regard to other divisions.

23 The prosecution assumes that all military
24 precautions adopted by the Government of Japan
25 during the years from 1928 to 1945, from the stand-

1 point of international law, were criminal acts in
2 themselves. It not only avers that the policies
3 of Japan were criminal but it asserts that if a
4 nation initiates a so-called war of aggression, or
5 a war in violation of certain treaties, etc., the
6 individuals who happened to be in office at the
7 time and participated in the decision to wage such
8 a war are criminally responsible. In other words,
9 the fundamental proposition advanced in this case
10 is that Japan, including the accused, continuously
11 committed alleged international crimes during the
12 entire period of seventeen years.

13 All the accused deny these propositions
14 with the utmost emphasis of which they are capable.
15 Counsel for the defense also represent to your Honors
16 and respectfully point out that neither in 1928 or
17 thereafter there was in existence anywhere a principle
18 of international law that even tended to impute to
19 political acts personal responsibility upon indi-
20 viduals acting on behalf of the state in its
21 sovereign capacity.

22 In this unprecedented proceeding an important
23 issue for consideration is whether or not the safety
24 measures, military and naval preparedness, undertaken
25 by Japan since 1928 were aggressive in nature.

1 It is too elementary to indicate to the
2 members of this Tribunal that preparedness of one
3 nation is made in contemplation of the activities
4 and apparent objectives of another nation or nations.
5 The sinister purpose, if any, of such preparedness
6 cannot be determined apart from this vital considera-
7 tion. It may well be, and no doubt has occurred
8 in history, that a particular nation having doubled
9 its standing army has been assailed as an aggressor,
10 whereas it has later been ascertained that a neighbor-
11 ing state trebled its standing army and the act of
12 the first nation is thereafter considered logical and
13 sound.

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1 It is realized that only Japanese military
2 and naval preparedness is here on trial -- not that
3 of other countries, some of whom are party complain-
4 ants -- but to the extent necessary to determine the
5 nature of the policies and measures of Japan we expect
6 that we may be permitted to present briefly evidence
7 concerning similar activities and undertakings of other
8 nations.

9 There are three vital considerations which
10 should be outlined in this opening statement in order
11 properly to comprehend the exact nature of the internal
12 and external policies of Japan during the period
13 covered by the Indictment. These are independence,
14 abolition of racial discrimination and fundamental
15 principles of diplomacy. These are not merely the
16 policies of any particular cabinets, of which there
17 were many, nor are they principles of specific
18 political parties. Rather they are national, long
19 standing, and firm aspirations universally subscribed
20 to and cherished by the entire Japanese nation since
21 the opening of the country to foreign intercourse in
22 1853, and are as important to the Japanese as are
23 free speech, free education and freedom of religion
24 in America.
25

The first of these national characteristics

1 is the fervent desire of the Japanese people to
2 preserve the nation as a perfect independent and sover-
3 eign state. The treaty of "ANSEI" between Commodore
4 Perry and the Shogun not only impaired the sovereignty
5 of the nation extra-territorially but infringed upon
6 its customs autonomy and hence was most deeply re-
7 gretted by all Japanese of that era.

8
9 The sincere desire of foremost leaders
10 throughout Japan in the Meiji period was to elevate
11 and enhance the standing of the nation to a position
12 of perfect independence and sovereignty. Since that
13 purpose was a worthy one, consistent with the principles
14 advocated by President Wilson after World War I, its
15 attainment should be recognized by this Tribunal. The
16 defense expects to prove that this principle was the
17 universal aspiration of the Japanese people.

18 The second point is the demand for the
19 abolition of racial discrimination. Racial discrim-
20 ination affects those who are discriminated against
21 much more keenly than those who discriminate. How-
22 ever, in order to eliminate racial discrimination the
23 standards of culture and education for this nation
24 needed to be raised. The government and the people
25 of Japan were not blind to these necessary requisites.
Where morality and custom called for certain

1 modifications and improvements they willingly admitted
2 their necessity and adopted them but the culture of
3 the world is not singular but plural according to the
4 number of nations and races concerned. Each nation
5 has its own history and tradition, and culture is
6 created and developed accordingly.

7 Since East Asia has its own culture it has
8 been the desire of the Japanese people to preserve and
9 purify it so that an equal position may be maintained
10 with all races and peoples in every respect and
11 thus contribute to the progress of mankind everywhere.
12 The aspiration for racial equality cannot be realized
13 simply by raising the position of the Japanese to the
14 standard of Europeans and Americans. By its very
15 nature the standard of all the peoples in East Asia
16 should be raised in order to attain the complete
17 abolition of discrimination. It is true that some few
18 authors might have referred to this idea in an extrav-
19 agant manner, but these writers were the exception.
20 It was the unanimously held hope of the Japanese
21 people, together with all other peoples of East Asia,
22 to reach that standard attained by Europeans and
23 Americans. It is expected that this point too will
24 be proved by the defense in order to clarify and avoid
25 any misunderstanding as to any alleged theory of

1 Japanese racial superiority erroneously implied by
2 the prosecution. We shall further develop that
3 Dr. Sun Yat-Sen, the father of the Chinese revolution,
4 and other leaders in India and throughout East Asia
5 expressed sympathy with this idea. If the true
6 intention of the Japanese people in this respect is
7 rightfully understood antagonism of other peoples and
8 other countries would surely vanish.

9 The third fact to be referred to is what has
10 been termed "the fundamental principles and doctrines
11 of diplomacy" of Japan. Since the Meiji Period the
12 prevailing ideal held by the government and the people
13 of Japan in respect to foreign relations was to main-
14 tain peace in East Asia and thereby contribute to the
15 welfare of the whole world. This was called the
16 "cardinal principle of diplomacy" in official docu-
17 ments and Imperial Rescripts, that is to say, the
18 fundamental ideal of Japan which guided its foreign
19 policy. The war with China 1894 to 1895 and the war
20 with Russia 1904 and 1905 were fought with that aim
21 and consideration in view. That is explicitly
22 written in the Rescripts declaring these wars. In
23 the actual conditions at that time, Japan was the
24 only country in the Far East which had adopted a
25 western civilization and had all the qualifications

1 of a modern state. Although China was a vast country
2 abundant in resources, she faced the danger of being
3 partitioned by the powers into spheres of influence.
4 Most of the regions in the south had already come under
5 the domination of several Occidental Powers. Under
6 such circumstances the Japanese people sincerely felt
7 that Japan had a special mission as a stabilizing
8 power in the East. This is not a peculiar notion
9 held only by the accused; it has been a fundamental
10 principle held for at least two generations by the
11 Japanese nation. This principle has been recognized
12 by the great powers, and we expect to prove that the
13 Anglo-Japanese Alliance was concluded and renewed as
14 a result of its recognition. The Japanese people can
15 not forget the sympathy of the government and the
16 people of the United States shown toward Japan at the
17 time of the Russo-Japanese war, which was fought for
18 the maintenance of that cardinal principle. That
19 principle of stabilization was never of an aggressive
20 nature. On the one hand, it prevented East Asia from
21 falling into political and economic confusion, and on
22 the other hand it promoted the common development of
23 all Asiatic races and thus their contribution to the
24 progress of mankind. Only in the light of the fore-
25 going ideals can the true relations between Japan and
her neighbors be fully understood.

1 The government and the people of Japan
2 have been especially sympathetic to the preserva-
3 tion and development of China. This is well ex-
4 pressed in official and unofficial documents since
5 the Meiji Period. The relations between Japan and
6 the Celestial Empire have often been voiced by the
7 proverb "Shin-Shi-Hosha" which means that "without
8 lips teeth are exposed to coldness," or "two wheels
9 of a car help one another." Another saying is "dobun
10 doshu" meaning that both countries use the same
11 letters, represent the same Confucian ethics and
12 are of the same race. About 1900 Japan invited many
13 students from China, President Chiang Kai-shek being
14 one of them. Since the Chinese revolution in 1911
15 the Government and people of Japan extended sympa-
16 thetic understanding to Doctor Sun Yat-Sen's work.
17 While it is true that the Japanese General Staff
18 had annual military plans, as has been pointed out
19 by the prosecution, it is also true that the military
20 staff never had a hypothetical military over-all
21 plan against China. The presentation of evidence
22 on these facts will, we believe, be helpful to the
23 Tribunal in disproving several averments contained
24 in the Indictment and the testimony in the record.
25

In Count 5 of the Indictment, citing the

1 whole of the particulars in Appendix A, and treat-
2 ies and assurances in Appendix B and C, it is charged
3 that the accused as leaders, organizers, instigators
4 or accomplices formulated and executed a conspiracy
5 with an intention to dominate the whole world in
6 conjunction with Germany and Italy. There is no
7 greater misunderstanding than this. As to rela-
8 tions between Japan and Germany and Italy, my
9 colleagues will present our case in the phase deal-
10 ing with the Anti-Comintern Pact and the Tri-partite
11 Pact. I should like here to treat the matter as a
12 whole concerning the ideals and aspirations of
13 Japan on the one hand and those of Germany and Italy
14 on the other.

15 Much of the confusion and misunderstandings
16 are due to the interpretation of the idea of "hakko
17 ichiu," cited in the preamble of the Tri-partite
18 Pact and in the Imperial Rescript, issued at the
19 time of the conclusion of the pact. Solemn classical
20 words and phrases are fondly and customarily used in
21 our official documents, giving to the document an
22 effect of dignity but often adding obscurity even
23 to the Japanese people themselves. So much more
24 with foreigners who have different languages and
25 concepts. For example, the Imperial Rescript issued

1 on the conclusion of the Tri-partite Pact para-
2 phrases "hakko ichiu" and says, "It is indeed a great
3 teaching of our Imperial ancestors that the Great
4 Cause shall be propagated all over the eight corners
5 of the world and the whole humanity on earth shall
6 be deemed one family. To thus agust teaching we
7 endeavor to adhere day and night." "The Great Cause"
8 here means "universal truth". To be "propagated"
9 here means that the said idea be made plain and
10 manifest by all the world. "To be in one family"
11 means that whole mankind is to live together with
12 the feeling of fraternity in one household. As
13 said before, the culture is of a different origin
14 from that of the West and, therefore, the expression
15 is necessarily very different or even quaint to
16 Europeans and Americans.

17 In the proposed plan for Japanese-
18 American understanding, which was the basis of
19 negotiation between the Secretary of State Hull and
20 Ambassador NOMURA, "Hakko Ichiu" is translated into
21 English as "universal brotherhood". The preamble of
22 the Tri-partite Pact should be interpreted in its
23 proper meaning. Whatever was the idea held by
24 Germany and Italy at the time of the conclusion of
25 the treaty, concrete and conclusive evidence will be

1 produced to show that the Japanese Government had
2 no intention to conquer the world in cooperation
3 with Germany and Italy.

4 THE PRESIDENT: We will recess for fifteen
5 minutes.

6 (Thereupon, at 1045, a recess was
7 taken until 1100, after which the proceed-
8 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Dr. KIYOSE.

4 DR. KIYOSE: In Article 2 of the said Pact it
5 is provided in effect that Germany and Italy respect
6 and recognize the leading position of Japan in the
7 establishment of a new order in Greater East Asia.
8 No word is more subject to misunderstanding than the
9 expression "New Order in East Asia" or "Greater East
10 Asia Co-Prosperity Sphere." The prosecution went so
11 far as to say that "a new order" is an idea to destroy
12 democracy and freedom and the respect for personality,
13 which are the basis of democracy. Is it not a con-
14 fusion of the ideal of the Japanese nation and that
15 of other countries, or, at least, a product of asso-
16 ciation with other ideas that led the prosecution to such
17 a misunderstanding? But the implication of the particu-
18 lar Japanese words as used at the period under consid-
19 eration, and the nature of the Japanese idea itself
20 alone are necessary for consideration here.

21 It was in the KONOYE declaration of November
22 3d and December 22, 1938, that the words "New Order
23 in East Asia" were first officially used. As to the
24 meaning of "New Order in East Asia" as used in the
25 KONOYE declaration, that declaration is a document

1 which speaks for itself; that Japan, Manchukuo and
2 China will cooperate on the basis of good neighborli-
3 ness, common defense against communism, and economic
4 cooperation. As to the relation with other countries,
5 the declaration says, "With regard to the economic
6 relations between Japan and China, Japan has no inten-
7 tion of monopolizing China economically." It did not
8 exclude the principle of equal opportunity. We must,
9 however, remember, as the prosecution contends, that
10 it was during the period when large scale battles were
11 taking place between the two countries involving more
12 than a million soldiers. In such a period of large
13 scale conflict it was inevitable that various restric-
14 tions were imposed upon foreigners as well as upon
15 nationals of the conflicting states. In connection
16 with this point, the joint declaration of Foreign Min-
17 ister ARITA and the British Ambassador Craigie in
18 July, 1939, will be presented as evidence. The declara-
19 tion says in part that, "the British Government fully
20 recognizes the actual condition that a large scale
21 warfare is going on in China, and the British Gov-
22 ernment recognizes that the Japanese Army has a
23 special demand in order to secure its own safety and to
24 maintain peace and order of the area under its control
25 as long as the said condition continues to exist. . ."

1 The intrinsic content of the idea of the new
2 order as used in Japan is the "Ko-do" or "Imperial Way,"
3 as it is sometimes translated. The gist of the "Imper-
4 ial Way" is benevolence, righteousness and moral cour-
5 age. It respects courtesy and honor. Its ideal is to
6 let everyone have his or her own part, and fulfill
7 his or her duty. It envisions ruler and ruled to be
8 of one mind and the affairs of state to be administered
9 by the sincere aid of the whole people. It is just the
10 opposite to the idea of militarism and despotism. It
11 is extremely difficult to express such ideals in lan-
12 guage other than Japanese, but as far as the respect
13 for individual personality is concerned, there is no
14 fundamental difference between the "Imperial Way" and
15 democracy. It is unusual to adduce evidence to prove
16 such abstract ideas in a court of justice, but we must
17 do this in the present case. We shall offer a speech
18 made by one of the accused in the Imperial Diet showing
19 the difference between the "Imperial Way" and the
20 totalitarianism of Germany and Italy.

21 THE PRESIDENT: Dr. KIYOSE, we prefer now to
22 deal with another matter. Will the captain represent-
23 ing the Stars and Stripes come to the lectern, please.

24 (Whereupon, Captain Taylor approached
25 the lectern.)

1 THE PRESIDENT: Will you state your name,
2 please?

3 CAPTAIN TAYLOR: Charles B. Taylor, Captain,
4 Infantry.

5 THE PRESIDENT: What is your position?

6 CAPTAIN TAYLOR: Sir?

7 THE PRESIDENT: What is your position?

8 CAPTAIN TAYLOR: I am the officer in charge
9 of the publication of the Stars and Stripes.

10 THE PRESIDENT: Well, an article displaying
11 great contempt of this Court appeared in the Stars and
12 Stripes this morning. Have you any explanation to
13 offer?

14 CAPTAIN TAYLOR: The publication of that
15 article was an error due to the fact that the release
16 date appearing on the top of the copy which we received
17 from the News Service was not adhered to strictly. Nor-
18 mally the release date that appears on copy which we
19 receive from the News Service, if it is the same day
20 as our publication, we publish that story. However,
21 it is my understanding that the time prescribed for
22 release of this story was 9:30 today; that I have
23 learned since the publication of the story this
24 morning.

25 THE PRESIDENT: Why 9:30? How did your office

1 know how much of that proposed address would be heard
2 by this Court? As a matter of fact, the whole of the
3 proposed address will not be heard.

4 CAPTAIN TAYLOR: Sir, the news copy from which
5 the story we ran was a routine dispatch from a News
6 Service in every respect, except that the release date
7 was prescribed for 9:30 today.

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1 THE PRESIDENT: All you are entitled to
2 publish is a fair report of the proceedings of this
3 Court. You are not entitled to anticipate anything
4 that will be said or done by the Court, or by any
5 person appearing before the Court.

6 This is not the first time that newspaper has
7 offended, in spite of a warning from the Court. It
8 looks as though irresponsibles are at times in charge
9 of that newspaper. Trusting such people with the
10 custody of an article like that is like giving a high
11 explosive to children. How do they know what effect
12 such an article will have on the security of the
13 country? And we are all concerned about that, courts
14 and everybody else. Courts are always most careful
15 in their proceedings to protect the security of the
16 country. That appears in their dealings with public
17 documents. In Britain, and I am sure in America, it
18 is sufficient for a secretary of state to say that a
19 document cannot be safely published without prejudice
20 to the security of the country; and the Stars & Stripes
21 management should remember that, or should know it if
22 they don't know it.

23 We give you another warning. We expect this
24 one to be observed. If not, we shall exercise what-
25 ever powers we have to protect the country and

1 ourselves. By the country, I mean the Allied Powers.

2 You are dismissed.

3 CAPTAIN TAYLOR: Thank you, sir.

4 THE PRESIDENT: Dr. KIYOSE.

5 DR. KIYOSE: Another obvious distinction
6 between the two is that there is no taint of racial
7 superiority in Japan as is found in Germany. On the
8 contrary, our people are always conscious of our own
9 limitations and are anxious to reach the world standard
10 with other peoples in East Asia. Since our new order
11 was to respect the independence of every country, it
12 never implied the idea of world conquest and it has
13 nothing to do with the restriction of individual
14 freedom. The terminology of "leadership" is understood
15 by us not to mean domination or control but only to
16 take the initiative as a leader or guide among ourselves
17 as equals. Such fundamental national ideals can never
18 be affected or changed by the inept wording of a
19 treaty or any other document, official or otherwise.
20 Later on we came to use the words "the New Order in
21 Greater East Asia" or "the Greater East Asia Co-Prosp-
22 erity Sphere" as including not only Manchuria and
23 China, but also other countries in East Asia. Not-
24 withstanding the fundamental idea remained the same.
25 The joint declaration consisting of five articles

1 adopted at the Greater East Asia Conference at Tokyo
2 in November, 1943, well expresses the essence of the
3 concept of the new order in Greater East Asia. It
4 provides:

5 1. The countries of Greater East Asia
6 through mutual cooperation will ensure the stability
7 of their region and construct an order of common
8 prosperity and well-being based upon justice.

9 2. The countries of Greater East Asia will
10 ensure the fraternity of nations in their region by
11 respecting one another's sovereignty and independence
12 and practicing mutual assistance and amity.

13 3. The countries of Greater East Asia by
14 respecting one another's traditions and developing
15 the creative faculties of each race, will enhance the
16 culture and civilization of Greater East Asia.

17 4. The countries of Greater East Asia will
18 endeavor to accelerate their economic development
19 through close cooperation upon a basis of reciprocity
20 and to promote thereby the general prosperity of their
21 region.

22 5. The countries of Greater East Asia will
23 cultivate friendly relations with all the countries of
24 the world and work for the abolition of racial discrimination,
25 the promotion of cultural intercourse and

1 the opening of resources throughout the world, and
2 contribute thereby to the progress of mankind.

3 The foregoing resolution, together with the
4 speeches given at the conference by the representative
5 of various countries will be presented as evidence.
6 Although the resolution considers East Asia as a family
7 of nations calling for mutual cooperation and amity,
8 it takes a world-wide view as far as the intercourse
9 among countries and development of resources and the
10 exchange of cultures are concerned. Article 5 of the
11 resolution is especially noteworthy. It was generally
12 held at that time that this planet is too large as a
13 political unit, but too small economically if it is
14 divided into various units. Thus it will be shown that
15 the idea of new order among us has not been that of
16 world conquest, but is in essence strangely similar
17 to the Good Neighbor Policy of the United States.

18 My duty is to outline facts to be presented
19 to the Tribunal in concise form. Therefore, I will avoid
20 legal arguments as far as possible. As the prosecution
21 aptly indicated, conspiracy as the first crime specified
22 in the Charter of this Tribunal, is only referred to
23 and not defined in the Charter. Apart from the legality
24 of the Charter to punish conspiracy, we cannot without
25 definition of conspiracy determine the facts which the

1 prosecution charges as criminal. Nor can the defendants
2 know what kind of evidence they are called upon to
3 disprove.

4 The prosecution has cited decisions of
5 inferior federal courts of the United States in an
6 attempt to define conspiracy and seem to assert that
7 the decisions of such courts are indisputable. This
8 Tribunal is an international court and the President
9 has already expressed the opinion that because of its
10 status it could hardly be expected to take judicial
11 knowledge even of the Constitution of the United States
12 of America, and it is inconceivable that the Tribunal
13 could accept the decisions of inferior federal courts
14 of the United States when those same courts came into
15 existence only as a result of the provisions of that
16 same Constitution.

17 We submit respectfully that it is not proper
18 to apply a particular legal theory which has developed
19 in a certain country with its peculiar historical
20 background at this Tribunal as if it were a general
21 principle of law of universal application. The idea
22 of conspiracy is unique in the Anglo-American legal
23 system and its counterpart cannot be found in the
24 countries following the Roman Law. Even in countries
25 which have adopted Anglo-American legal principles, it

1 is impossible strictly to apply in toto particular
2 decisions of England and America. In some countries
3 when two or more persons plot a particular crime they
4 are punished as accomplices. In that case the object
5 of the plot must be clearly illegal and it must be shown
6 that it cannot be accomplished except by adopting an
7 illegal method. In Japan it is rather exceptional to
8 punish the preparation of a crime and plot thereof
9 before the commission of a criminal act. The kinds of
10 crimes the preparation of which are punishable are
11 enumerated in the criminal code. The same, as I
12 understand it, could be said as to the criminal law
13 of other countries which have adopted the Roman legal
14 system. Moreover, in order to constitute a plot or
15 conspiracy as an independent crime, the date and place
16 of such plot or conspiracy must be specified to an
17 intelligible extent. In countries which have not
18 adopted the Anglo-American legal system, it is incon-
19 ceivable, therefore, that a conspiracy could exist
20 from January 1928 to September 2, 1945. What I wish to
21 submit is that the said doctrine, to-wit, the doctrine
22 of conspiracy, as has been developed in England and
23 America as one entity, cannot be deemed to constitute
24 international law. If the decisions cited by the
25 prosecution mean that those who join the conspiracy

1 after the common plan was formulated are criminally
2 responsible to the same extent as the original
3 conspirators, we submit this is decidedly not a commonly
4 accepted legal principle throughout the world and,
5 therefore, cannot be applied by this International
6 Tribunal as a precept of international law.
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1 The method of selecting the head of the
2 cabinet since 1928 was largely a matter of chance.
3 If a cabinet falls for some reason or other, the
4 Emperor seeks, through the Lord Keeper of the
5 Privy Seal, the advice of elder statesmen (mostly
6 ex-premiers) as to who is to be the successor. As
7 the elder statesmen themselves are not an organized
8 group, those who happen to **attend** the meeting discuss
9 the matter and select extemporaneously a premier
10 designate after due consideration is given to the
11 exigency then existing and report the decision to
12 the Throne. The Emperor accepts the advice without
13 exception. Since there is no way to foretell who
14 will become the Premier until the moment the report
15 of the elder statesmen is submitted to the Throne,
16 it is impossible in Japan for a certain organization,
17 party or clique to monopolize power for any duration
18 of time, and continue a particular plan or conspiracy.
19 The so-called "TANAKA Memorial" referred to by a
20 certain prosecution witness as evidence of conspiracy,
21 is, we submit, a forgery and a travesty. Pertinent
22 documents and witnesses will be produced to prove
23 these points.
24

25 Section 2 of the preamble of the Indictment
and paragraph 4, Section 6 of the Appendix of the

1 Indictment seem to consider the Imperial Rule
2 Assistance Association and the Imperial Rule Assistance
3 Political Society as something akin to the Nazis in
4 Germany or the Fascists in Italy. Nothing can be a
5 greater misunderstanding of Japanese politics than
6 this. Although this point has been partly proved
7 by cross-examination of the witness produced by the
8 prosecution, we think it necessary to prove our con-
9 tention more conclusively by authoritative documents
10 and witnesses, and expect to do so.

11 The prosecution refers to the Imperial
12 Ordinance of 1936 to the effect that the Ministers
13 of War and of the Navy must be selected from among
14 generals and lieutenant generals or admirals and
15 vice-admirals of the active list, and goes on to
16 contend that the purpose of the Ordinance was for
17 the army to control the government and that the army
18 utilized the Ordinance for the plotting of armed
19 expansion of Japan. This is contrary to the real
20 state of affairs. This Imperial Ordinance was pro-
21 mulgated after the February 26 Incident of 1936, a
22 rebellion in which Premier OKADA and other elder
23 statesmen were assaluted. It was feared at that time
24 that, if some generals in the reserve list had any
25 connection with any group of men concerned in the

1 February Incident, and one of them happened to be
2 appointed War Minister, that would be a serious
3 matter for the safety of this state. This Ordinance
4 was enacted to prevent the occurrence of that kind
5 of thing. In other words, the purpose of the said
6 Ordinance was to make a thorough purification of the
7 army possible. As a matter of fact, the Ordinance
8 was effective. Its result was, contrary to the
9 prosecution's charge, to restrain those who insisted
10 on using armed force illegitimately. On this point
11 we are ready to present evidence. Briefly speaking,
12 it is a misunderstanding of fact to think that there
13 was any military organization which controlled the
14 Japanese Government during the period specified in
15 the Indictment.

16 The defense will refute the charge of
17 conspiracy among the accused for the conquest of the
18 world in general (Counts 4 and 5); domination of East
19 Asia, the Pacific, Indian Ocean and regions adjacent
20 thereto, (Count 1); or the control of China (Count 3);
21 or the control of Manchuria, (Count 2). There are
22 differences of age and environment among the accused.
23 Some of them are army or navy officers, some are civil
24 officers, some are diplomats, and some are authors.
25 They never had any chance to meet as a whole with any

1 special object in view. They never had any occasion
2 as a group to exchange their opinions on any such
3 matters. As a matter of fact there were real dif-
4 ferences and divisions of opinion among some of them.
5 If some of them as a group were in any way related
6 with the Manchurian Incident, the China Affair or
7 the Pacific War, it was due to the fact that they
8 were prominent personages when those incidents or
9 hostilities which demanded concerted activities of
10 the whole nation took place. There is no such fact
11 nor supporting proof that the accused and certain divers
12 persons, who have never been named by the prosecution,
13 who are not indicted, created a conspiring organiza-
14 tion and by some method or other devised a common
15 plan to conquer or dominate the world, East Asia,
16 the Pacific Ocean, the Indian Ocean, China or Manchuria.
17 We will produce evidence to disprove the existence of
18 any such conspiracy of conquest or domination.

19 There is another point in this connection
20 which the defense are ready to prove. It is a mistake
21 to think that there was one common and premeditated
22 plan throughout the Manchurian Incident, the China
23 Incident and the Pacific War. They were separate
24 events having separate causes. Persons who were con-
25 cerned with one incident were different from the

1 persons concerned with the others. There is no such
2 fact that the former officials passed on their pre-
3 meditated plans to their successors or that they
4 were accepted by them. The most obvious thing is the
5 difference between the Manchurian Affair on the one
6 hand and the China Incident and the Pacific War on
7 the other. The Manchurian Incident came to an end in
8 1933 by the Tangku Truce. After that officials of
9 the Chiang Kai-shek Government concluded agreements
10 with Manchukuo with regard to customs, postal service,
11 telegraph and railroad. In 1935 Chiang Kai-shek pro-
12 mulgated the Good Neighbor Ordinance toward Japan.
13 Mr. HIROTA, Foreign Minister of the OKADA cabinet,
14 negotiated with China and formulated the "HIROTA
15 Three Principles" including the recognition of the
16 status quo of Manchuria and North China and secured
17 the consent of the Chinese Government to discuss the
18 details with those principles as the basis. It is
19 unnatural and erroneous to suppose that the China
20 Incident, which took place four years after the Tangku
21 Truce, had been intentionally planned and executed by
22 particular individuals with the same object as the
23 Manchurian Incident in view. The necessary evidence
24 to prove the above points will be produced.
25

In Division 1, various evidence will be produced

1 in connection with Japan's internal politics. The
2 prosecution alleges that for many years, even previous
3 to January 1928, the Japanese Army taught the militar-
4 istic spirit to Japanese young men, and tried to
5 cultivate an extreme nationalistic idea that the
6 progress of Japan depended upon wars of conquest;
7 also that the army enforced that educational policy
8 in public schools, and concludes that this fact is
9 evidence of the existence of a conspiracy. Nothing
10 can be a greater mistake than such a view of Japanese
11 education. The educational system in the public
12 schools was modeled on the American system after
13 1872. The foundation of Japanese national ethics
14 has since then been the synthesis of Japan's ancient
15 tradition and China's Confucian teachings with
16 Occidental ethics. In 1890, the Imperial Rescript
17 concerning education was promulgated, in which certain
18 virtues such as loyalty, filial piety, universal love,
19 justice, public spirit and the spirit of service were
20 specified. It never included warlike spirit. The
21 fundamental principle held by the Imperial family has
22 always been peace, love and benevolence, excluding
23 extravagance and encouraging simplicity and vigor;
24 but this is different from the encouragement of war.
25 It is true that after 1929 following the example of

1 the United States and Switzerland, Japan adopted
2 military drill in the schools with the aim in view
3 of developing discipline of mind and body, and to
4 improve the character of youth. This was done in
5 order to make up for the deficiency caused by re-
6 trenchment in armaments and military budgets by the
7 Japanese Government and hence cannot be considered
8 as an expression of aggressiveness. The foregoing was
9 the fundamental educational policy and no Minister
10 of Education had the power to modify it. There is
11 nothing to prove that the Government or the army
12 taught the people that the future of Japan depended
13 on aggressive war.

14 Japan being a country of small area and
15 incapable of self-support because of meagre natural
16 resources, there is no way for Japan other than
17 immigration, foreign trade and industrialization in
18 order to feed her rapidly increasing surplus population
19 and to maintain her economy. Since immigration was
20 restricted by many of the Western powers, Japan was
21 forced to choose foreign trade and industrialization
22 and she naturally adopted the appropriate method towards
23 that direction, especially in East Asia, which because
24 of propinquity and special interests it was natural
25 for her to do.

1 Meanwhile under the storm and stress of
2 world economic depression, England dropped off the
3 gold standard in September 1931 and other countries
4 soon followed her example. Since the British Imperial
5 bloc was formed with the Ottawa Conference in July
6 1932, the world-wide tariff war was intensified and
7 trade barriers became serious. Notwithstanding,
8 Japan still maintained the principle of free trade,
9 and when the world currency and economic conference
10 was held in June 1933 Japan participated in it with
11 great expectation; and Viscount Kikujiro ISHII, the
12 Japanese delegate, enthusiastically presented Japan's
13 point of view. However, the conference was unsucces-
14 ful, the United States' stand contributing heavily to
15 that end.

1 In 1934 an Anglo-Japanese trade conference
2 was proposed by Great Britain and was held. Although
3 Japan sent her delegates to that conference, Great
4 Britain insisted on the limitation and allocation of
5 Japan's trade, not only within the British Common-
6 wealth of Nations but even to third countries. Since
7 it was impossible for Japan to accept such a proposal
8 she withdrew from the conference and thus the nego-
9 tiations ended fruitlessly. Consequently, with the
10 declaration of Mr. Ranshman, Secretary of Commerce,
11 the whole British Empire restricted Japan's trade.
12 Meanwhile a trade conference was held between Britain
13 and the Dutch East Indies, and the latter adopted
14 forceful measures to prevent Japanese imports and
15 then proposed a Japanese-Dutch trade conference.
16 Although this conference took place in June 1934,
17 adjustment of Japanese-Dutch trade was extremely
18 difficult since the position of Japan was different
19 from that of England. On the other hand, the anti-
20 Japanese movement in China also became intensified.
21 Thus Japan, which had to depend on foreign trade for
22 her existence, was faced with a grave situation.

23 Because of such economic stress throughout
24 the world, Japan was compelled to turn to planned
25 economy and the formation of an economic bloc for her

1 economic self-autonomy. In particular, the consecu-
2 tive five-year plan of the Soviet Union was keenly
3 felt by Japan. Since she was considerably backward
4 in heavy industry, she strongly felt the necessity
5 of promoting this phase of her economy. Various
6 measures of economic control and planning were adopted
7 under such circumstances. They were in no sense pre-
8 meditated preparation for the China Incident; so
9 much less so with regard to the Pacific War. On
10 these points we will produce evidence and statements
11 of expert witnesses.

12 Before the war, freedom of speech was
13 respected in Japan as much as in most other coun-
14 tries. However, it is a truism that the propagation
15 of communism and ultra-nationalism has been prohibited
16 by law since 1925. Japanese people wished to main-
17 tain the system of private property and they violently
18 abhorred having the Imperial Household subjected to
19 disrespect. The communists deny the system of private
20 property and they intend to destroy the Imperial
21 Dynasty. Since 1920 the movement of the Communist
22 Party had become active in Japan and a subversive
23 movement to destroy private property and the Imperial
24 Dynasty began to take impetus throughout the country.
25 It is only natural under such circumstances that a

1 sovereign state should prohibit such a movement. It
2 is neither a plan nor a preparation for war. This
3 point can be easily proved by the fact that the Peace
4 Preservation Law was proposed by a coalition govern-
5 ment of the three parties which were regarded as
6 liberals. The facts concerning the direction of
7 thought and speech will have to be shown by produc-
8 ing evidence. It is needless to say that once war
9 opens a certain amount of restriction on freedom of
10 speech and other civil liberties becomes necessary
11 for preventing espionage, and it is introduced in
12 every country without exception. There should be
13 no confusion of thought on this point. The object of
14 the thought control was not only the leftist movement
15 mentioned above but also the rightist or ultra-
16 nationalist movement. Some of the accused while in
17 office were responsible for the control of such move-
18 ments.

19
20 There arose in Japan about 1930-1931 a so-
21 called reformation movement (Kakushin Undo). This
22 movement was not necessarily aimed at expansion. It
23 must be remembered, however, that the Japanese popu-
24 lation was rapidly increasing year after year and was
25 almost on the point of reaching one hundred million.
Natural resources were extremely limited. And as a

1 result of world-wide economic depression, commerce
2 and industry as well as agriculture were facing serious
3 difficulties. Party politics existed at that time;
4 and the Seiyukai and the Minseito alternately formed
5 the cabinets. But the method of political contest
6 was unfair and instances of political corruption
7 were exposed day after day. Being excited and irri-
8 tated by these facts and incidents, hot-headed young
9 men and young officers appealed to direct action.
10 The evidence to show the motive of this movement was
11 partly destroyed by air raids to our regret but the
12 remaining part and witnesses will be produced to show
13 that the movement did not aim at aggressive war. At
14 this opportunity it is worthwhile to point out that
15 some of the accused contributed to suppression of
16 this movement.

17
18 The prosecution presents the national defense
19 plans of Japan since 1937 as evidence of Japan's
20 aggressive design. But armaments are always relative
21 as has been said before. It is not possible to
22 determine whether the national defense plan of Japan
23 was aggressive or not until and unless it is studied
24 in comparison with the plans of other countries. In
25 1937 the military neighbors of Japan were China and
the Soviet Union. As to China, Japan never proposed

1 to come to an over-all conflict and therefore had
2 no comprehensive plan of operations; as to Russia, we
3 shall prove the nature of Japan's military plan by
4 presenting her second and third five-year plans and
5 the condition of the Far Eastern Army of the Soviet
6 Union after 1936. The military or naval staff of
7 every country makes annual plans in consideration of
8 potential enemies but it is needless to say that the
9 existence of such plans does not indicate that the
10 country has the intent to wage war against other
11 nations. It is also possible to prove that the in-
12 tent of Japan was not aggressive by contrasting Japan's
13 naval plans after the London Naval Conferences with
14 those of the United States and the British Empire.

15 The nature and scope of the right of self-
16 defense is a question of international law, and
17 therefore no evidence is necessary. However, the
18 question to what extent the right of self-defense is
19 reserved in a particular treaty may be answered in
20 the light of circumstances surrounding the conclusion
21 of the treaty. The defendants are prepared to produce
22 the evidence relative to the negotiation of the
23 Kellogg-Briand Pact, the official declarations of
24 the parties concerned and the reservations of the
25 governments at the time of the conclusion of the Pact,

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1 jurisdiction and responsibility of the military com-
2 mand (the Chief of the Army General Staff and the
3 Chief of the Navy General Staff) and of the Minister
4 of War or the Navy is an important issue. The juris-
5 diction of various other governmental organs must
6 also be considered in this connection. The defendants
7 are prepared to produce witnesses to clarify this
8 point. The nature of command and the duty of
9 obedience in the Japanese Army are different from
10 those of other countries. This will be considered
11 separately with regard to peace time and war time.

12 Concrete evidence will be submitted to show
13 the connection with the interpretation and applica-
14 tion of the Potsdam Declaration and the Instrument of
15 Surrender.

16 THE PRESIDENT: We will adjourn now until
17 half-past one.

18 (Whereupon, at 1200, a recess was
19 taken.)
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AFTERNOON SESSION

The Tribunal met, pursuant to recess,
at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Dr. Kiyose.

DR. KIOSE: Before resuming the reading
of my opening statement I should like to make a
remark. It was reported from this lectern this
morning that the accused SUZUKI did not agree with
the opening statement. That has been a mistake.
The fact is that the accused SUZUKI also joins
this opening statement. That fact has been reported
to me by his counsel.

We shall resume our reading from the
middle of page 25.

(Reading) This will be done for the
following reason.

When one party induces the other to sur-
render while employing certain mode of warfare, it
is naturally presumed that the former induces sur-
render assuming his own particular mode of warfare
to be legitimate. If the word "crime" happens to
be used in such inducement to surrender, that word

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1 should not include such mode of warfare as is being
2 used by that party while inducing surrender.

3 THE PRESIDENT: We wish to hear Mr. Tavenner
4 on a matter. Mr. Tavenner.

5 MR. TAVENNER: If it please the Tribunal,
6 an examination of Item D on page 25 and Item 18
7 on page 26 -- I say from such an examination of
8 those two items it would appear that these matters
9 are matters which come under the ruling of the
10 Court this morning and should be deleted for the
11 same reasons as page 20 -- page 24.

12 THE PRESIDENT: The point upon which I
13 desired to hear you is the condition of the accused
14 HIRANUMA. I understand he is not in a condition
15 to remain in Court, and I wanted to know what the
16 attitude of the prosecution was.

17 MR. TAVENNER: I had not been informed,
18 your Honor, and it is the position of the prose-
19 cution that he should be examined immediately and
20 his condition ascertained.

21 THE PRESIDENT: I directed that you be
22 informed; and I also want to know what his counsel
23 has to say.

24 Colonel Warren.

25 MR. WARREN: I regret that I had not been

1 informed, your Honor, and I am not sure whether
2 my Japanese counsel had been informed. He had
3 not been informed, but we understand that the Baron
4 is getting elderly and his health for some time
5 has been delicate, and if he is, we would like to
6 have him, of course, receive immediate medical
7 attention, whatever is necessary.

8 THE PRESIDENT: You have permission for
9 the accused HIRANUMA to leave the Court for exam-
10 ination. He will be represented by his counsel.

11 Dr. KIYOSE.

12 DR. KIYOSE: May I continue?

13 THE PRESIDENT: Proceed.

14 DR. KIYOSE: (Reading) This we take to
15 be a correct interpretation of any such inducement
16 or declaration. Therefore, the type of warfare
17 which the Allied forces openly employed against
18 Japan should be excluded from the "crimes" provided
19 for in the Potsdam Declaration. This will determine
20 the limit of war crimes to be dealt with in this
21 Tribunal. Records, photographs and many witnesses
22 will be produced in order to show the type of
23 warfare conducted by the Allied Powers.

24 The prosecution contends that aggressive
25 war has been an international crime for a long time

1 and gives a definition of aggression. In order to
2 support its theory of aggression it goes on to cite
3 various treaties and agreements. As John Bassett
4 Moore has said in his "Appeal to Reason", it is
5 impossible to define what is aggression. We are
6 not going into a legal argument now. We expect to
7 have an opportunity to discuss legal problems later
8 on. However, we think it is appropriate at this
9 moment to point out certain omissions in the facts
10 by the Prosecution. It first invokes the Hague
11 Convention I of 1907. But this treaty does not
12 make good offices and mediation an absolute duty.
13 The contracting parties are only expected to submit
14 their disputes to good offices or mediation "as far
15 as possible" or "as far as circumstances allow".
16 The prosecution next refers to the draft treaty of
17 Mutual Assistance, which was discussed at the Fourth
18 Assembly of the League of Nations in 1923. The
19 said draft was dropped at the Fifth Assembly in 1924
20 and has never become a treaty. Therefore it is
21 not binding on any power. The prosecution refers
22 to the Geneva Protocol of 1924. This was signed
23 by the delegates but since Great Britain withheld
24 ratification, no state ratified it. Thus the Geneva
25 Protocol has never become a treaty. This fact proves

1 that it has been thought too premature as well as
2 too difficult to define and to determine aggressive
3 war as an international crime. The Kellogg-Briand
4 Pact of 1928 does not provide that aggressive war
5 is an international crime.

6 The Indictment from Count 37 on provides
7 for a group of crimes under the title, "murder",
8 and charges crimes of murder against the defendants
9 for the loss of lives due to the act of war. The
10 defense contends that the loss of lives due to the
11 act of war does not constitute murder. This, we
12 believe, is an accepted theory of international
13 law and is too obvious to call for any authority.
14 The state of war in this instance came into existence
15 when the first shot was fired. Therefore, we will
16 produce evidence to show that the loss of lives
17 referred to in Counts 37 to Count 44 in the Indictment
18 occurred after the state of war existed.

19 The prosecution asserts that in all cases
20 of aggressive war those who are in official position
21 should be treated as common felons; that is, murderers,
22 brigands, pirates and plunderers and should be
23 punished as such. It goes on to say that such is
24 a generally recognized principle of international
25 law. Does the prosecution refer to the primitive

1 age in which international law did not exist?
2 Since international law came into existence there
3 has always been a distinction between war as an act
4 of sovereign states and acts of brigands or pirates.
5 This seems to us the first principle of international
6 law.

7 In case a war is waged by the will of
8 the state, it becomes an important question in
9 international law whether individuals who are in
10 official positions of the state are ipso facto
11 criminally responsible. The Allied Powers contend
12 that this World War II was fought by them for the
13 maintenance of international law. We take it,
14 therefore, the Allied Powers will have no objection
15 to the strict interpretation of international law.
16 The prosecution refers to this point several times
17 in the opening statement. It maintains this although
18 it is fully aware of the danger of proceeding without
19 precedents. For our part, we are convinced that
20 international law as it existed from 1928 to 1945
21 imparts no responsibility to individuals in official
22 positions for the act of the state. Even the new
23 Charter of the United Nations, the latest pronounce-
24 ment of international law, does not propose such a
25 doctrine. Therefore, we believe that the provisions

1 concerning individual responsibility in this Charter,
2 something which the Potsdam Declaration we submit
3 did not contemplate, are ex post facto law. For
4 this reason we will produce evidence to show that
5 international law as it existed during the period
6 indicated by the Indictment did not impute criminal
7 responsibility to individuals for the act of the
8 state.

9 THE PRESIDENT: Dr. KIIYOSE, you have been
10 putting for some time arguments which have already
11 been put, but you are attempting to camouflage the
12 arguments by alleging that you are about to intro-
13 duce evidence which can only be argument.

14 DR. KIIYOSE: I shall resume from paragraph
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1 The Prosecution frequently compares incidents
2 which occurred during the Pacific War with acts of
3 Germany during the European war. It asserts that
4 terrorism and atrocities occurring during the Pacific
5 War were of the same type that Germany committed,
6 and that these acts were not incidental errors on the
7 part of the individuals but premeditated acts com-
8 mitted in pursuance of a national policy. Counsel
9 for the Defense are prepared to show that the central
10 government and high command strongly desired that the
11 rules and customs of war be strictly observed and that
12 civilians and even enemies who had given up arms,
13 be treated humanely. For that purpose "The Battle-
14 field Manual" was issued in January 1943 and distri-
15 buted to all soldiers, while the Navy on its part
16 endeavored to have these rules and customs of war
17 properly and thoroughly understood by its personnel,
18 and violators were tried by Court Martial. The Army
19 and Navy Chiefs of Command at the front were always
20 emphatic in stressing this point. We must admit,
21 however, that during the later period of the war
22 when the communications with the home country were
23 cut, battlefields isolated, orders from the command-
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1 ing officers became impossible, food became scarce
2 and the very existence of the Japanese soldiers pre-
3 carious, or when they met with cruel guerrilla war-
4 fare by natives inhumane acts may have been committed.
5 As to the prisoner of war labor of non-commissioned
6 officers and officers, we contend the orders were
7 that such labor should be performed voluntarily. On
8 these matters we are prepared to produce concrete
9 facts in Division 1. Intentional violation of human
10 decency as was alleged to have been committed against
11 the Jews in Germany was never present in Japan. We
12 are prepared to produce evidence to explain the differ-
13 ence between the war crimes of Germany and the alleged
14 acts of the accused.

15 Division 2 is provided for the purpose of
16 disproving crimes as alleged by the prosecution to
17 have been committed in Manchuria since 1931. It
18 relates to Count 2, Appendix A, Count 18 and Count
19 27. Count 44 also relates to this division to some
20 extent. There is ample evidence which the accused
21 will present under this division.

22 The Lytton Report, which the Prosecution
23 presented, says in part: "... the issues involved
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1 in this conflict are not as simple as they are
2 often represented to be. They are, on the contrary,
3 exceedingly complicated, and only an intimate know-
4 ledge of all the facts, as well as of their historical
5 background, should entitle any one to express a def-
6 inite opinion upon them."

7 In order to show the special conditions in
8 Manchukuo, Japan's special rights and interest in
9 Manchuria and their legitimacy will be proved. Why
10 did Japan acquire special rights and interests in
11 Manchuria? Why did the Japanese go to Manchuria?
12 Japan is a country of small area and a large popu-
13 lation. As long as emigration was possible the
14 problem was hoped to be partly solved by that. In
15 1908 Japan's emigration to the United States was
16 virtually stopped by the so-called "Gentlemen's
17 Agreement." At that time Mr. Jutaro KOMURA, Foreign
18 Minister, spoke at the Imperial Diet as follows:
19 "In order to prevent our people from scattering
20 around remote foreign territories, it has become
21 necessary to concentrate them to this district
22 (Manchuria) and administer them with their joint co-
23 operation --- The Japanese government in considera-
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1 tion of these points will follow the established
2 policy with regard to the immigration to the United
3 States and Canada, and is faithfully enforcing the
4 restriction of immigrants." This declaration has
5 been taken in Japan as having previously been under-
6 stood by the United States. With regard to Japan's
7 relations with the United States an agreement was
8 reached between Mr. Lansing, Secretary of State of the
9 United States and Mr. ISHII, Japanese representative,
10 in December 1917. It says in part: "The govern-
11 ments of the United States and Japan recognize that
12 territorial propinquity creates special relations
13 between countries, and consequently, the Government
14 of the United States recognizes that Japan has special
15 interests in China, particularly in the part to which
16 her possessions are contiguous." The agreement was
17 made in the form of exchange of notes. The agreement
18 was cancelled later, but before its nullification
19 our people had done much in Manchuria. This achieve-
20 ment cannot be taken away by the nullification of the
21 Lansing-ISHII Agreement.

22 At that period the authorities in Manchuria
23 maintained their power in cooperation with Japan.
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1 Since 1925 the national rights recovery movement arose
2 throughout China. The situation in Manchuria was
3 vitally affected. In 1928 Chang Tso-Lin was killed
4 and the Manchurian authorities adopted the Chinese
5 Republic flag. As soon as the Kuo-min-tang (Chinese
6 Nationalist Party) stepped into Manchuria, Japanese-
7 Manchurian disputes continuously increased. In
8 1931 there were more than three hundred pending
9 problems. We will show these facts by evidence.

10 Japan had a legal right under treaties and
11 agreements to maintain the Kwantung Army in Manchuria
12 in order to protect her rights and interests in the
13 Kwantung Peninsula and Manchuria. In 1931 the total
14 of the Kwantung Army consisted of eight battalions
15 of infantry, two batteries of artillery and one in-
16 dependent garrison (six battalions of infantry),
17 making 10,400 men in all, it being less than the number
18 of fifteen soldiers per kilometre of railway lines in
19 Manchuria, provided for in the additional articles to
20 the Portsmouth Treaty of 1905. The forces under the
21 control of Chang Hsueh-Lieng, on the other hand,
22 consisted of 268,000 of the regular army and hordes
23 of irregulars. The Kwantung Army was a small force
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1 of 10,400 encircled by more than 200,000 Chinese.
2 Its duty was to protect the South Manchuria Railway,
3 which extended one thousand kilometres, and Japanese
4 nationals numbering one million two hundred thousand
5 scattered all over the vast expanse of Manchuria.

6 Under these circumstances in the emergency that arose
7 it was necessary for the Kwantung Army to take prompt
8 measures of self-defense.

9 The Prosecution contends the occurrence at
10 Mukden on September 18, 1931, was a planned action
11 on the part of Japan. The defense will produce evi-
12 dence to prove the true cause of the incident, which
13 resulted in armed conflict. Once a conflict occurred,
14 the Kwantung Army for its own self-defense and for the
15 execution of its own duty had to defeat the Chinese
16 forces. We will show the details of the incident by
17 producing the testament of General HONJO. The govern-
18 ment of Japan did not wish to see the situation ag-
19 gravated and tried its best to stop the incident,
20 but the situation grew from bad to worse against its
21 will. The truth of this situation and the attitude
22 of the League of Nations and of the United States will
23 be explained by producing pertinent documents, and
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1 has already been shown by testimony and documents
2 already presented by the Prosecution.

3 While the Kwantung Army was fighting with
4 the Chinese forces for self-defense, the inhabitants
5 in Manchuria started a self-rule movement for Manchuria
6 for various motives, such as the consideration for the
7 welfare of the various peoples, anti-communism, the
8 desire of the Mongolian people for independence from
9 the Chinese Republic, the discontentments of the var-
10 ious generals against Chang Hsueh-Liang, and the de-
11 sire to restore the Chin Dynasty. In February 1932
12 the Administrative Committee of the North East prov-
13 inces was created, and on March 1 the government of
14 Manchoukuo was inaugurated. The outline of these
15 activities will be explained and proved.

16 After the establishment of Manchoukuo the
17 Japanese were permitted to acquire Manchoukuoan nation-
18 ality. It is true that some number of the Japanese
19 nationals became officials, and directly participated
20 in the development of the country. But these all
21 were after the new State was created. In September
22 1931 the Minister of Foreign Affairs and the Minister
23 of War of Japan instructed the Japanese officials in
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1 Manchuria not to participate in the establishment of
2 the new State. In other words, notwithstanding the
3 Lytton Report, the birth of Manchoukuo was the result
4 of a voluntary independence movement by the inhabi-
5 tants of Manchuria. Evidence will be produced to
6 prove this fact.
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1 The Manchurian incident was settled in May
2 1933. During 1935-1936 China was inclined to
3 recognize the de facto status of Manchuria. Other
4 countries began to recognize Manchoukuo. Especially
5 the Soviet Union, which now sends prosecutors to
6 this Tribunal, agreed to respect the territorial
7 integrity and inviolability of Manchoukuo in 1941.

8 The third division concerns China. The
9 counts relating to this division are counts 3, 6,
10 19, 27, 28, 36, 45 to 50, and 53 to 55.

11 The responsibility for the Marco Polo Bridge
12 incident does not lie upon Japan. It will be noted
13 that Japan along with the other powers had a right to
14 station some armed forces in North China and was
15 allowed to hold field maneuvers under the Boxer Pro-
16 tocol of 1901 and its appended notes. Moreover, in
17 this area Japan had other important lawful interests
18 and a considerable number of her nationals residing
19 there. Had the incident been settled locally, as was
20 desired by Japan, the conflict would not have been
21 aggravated to such a magnitude and there would not
22 have arisen any question of aggressive war. There-
23 fore, we will also prove that China was responsible
24 for the enlargement of the incident and that Japan
25 throughout the whole incident adhered to the policy

1 of non-aggravation and tried its best to settle the
2 question locally.

3 On July 13 the KONOYE Cabinet declared as
4 follows: "Even now the Army will adhere to the
5 policy of no-aggravation and local settlement and
6 will avoid to its utmost effort any action which
7 might lead to a war. For this reason the Japanese
8 Army has approved the conditions submitted by the
9 representatives of the 29th Army signed at 8:00 p.m.
10 of the 11th, and will watch its execution."

11 But China did not stop hostile acts. The
12 assault at Lanfong, the Kwan An Men incident, the
13 atrocities at Tungchow, etc. continuously occurred.
14 China began to take on an organized war attitude.
15 On July 12, Generalissimo Chiang Kai-Shek ordered a
16 mobilization applicable to a large area. Meanwhile,
17 the concentration of the Chinese forces in North China
18 became increasingly intense. The Japanese forces in
19 Fengtai were encircled and violently attacked by the
20 Chinese forces. On July 27 the Japanese forces in
21 China decided to take up arms for self defense.
22 The actual conditions during this period will be ex-
23 plained and proved by documents and witnesses.

24 Japan notwithstanding still persisted in the
25 policy of non-aggravation. Chiang Kai-Shek continued

1 continued to strengthen his forces. On August 15
2 the Total Mobilization Order was issued. The General
3 headquarters was established; Chiang Kai-Shek him-
4 self became commander-in-chief of the army, navy and
5 the air forces. The whole country was divided into
6 four war districts: First War District (Hopei-
7 Charhar), Second War District (Charhar-Shansi), Third
8 War District (Shanghai), Fourth War District (South
9 China), for each of which respective army forces
10 were allocated, and thus a total war basis against
11 Japan was completed.

12 It can be said that hostilities on a large
13 scale commenced at this time, although even then
14 diplomatic relations between the two countries were
15 continued. Because of the menacing conditions just
16 described, on August 31 Japan sent three divisions
17 to North China in order to safeguard her lawful
18 interests. The name of the Japanese Army in China
19 was changed to the Japanese Forces in North China.
20 The commander of the Japanese Forces in North China
21 was instructed to secure the stabilization of the
22 Peiping-Tientsin area and to break down the warlike
23 intention of the opposition and to bring the conflict
24 speedily to an end. Even at this stage Japan only
25 sought to restore friendly relations and order and

1 tranquility in North China and abandonment of anti-
2 Japanese policy on the part of China.

3 The Japanese government first designated
4 this conflict "The North China Incident" because it
5 thought its extent could be limited to North China.
6 But it spread to Middle China in August contrary
7 to Japan's desire, the cause of which will be ex-
8 plained later. China, ignoring the Shanghai truce
9 which was concluded in 1932 by the good offices of
10 British, American and other representatives, con-
11 structed military bases in an unfortified area, and
12 concentrated forces of more than 50,000, while the
13 Japanese marines in that area were not more than
14 4,000, thereby jeopardizing Japanese lives and
15 interests there. Lieutenant OYAMA, company commander
16 of the special marine detachment of the Japanese
17 Navy, was wantonly shot to death by the Chinese
18 Army. On August 15 Japan decided to send troops to
19 Shanghai for the protection of lives and properties
20 of her nationals. It was under such circumstances
21 that the conflict in Middle China started. In other
22 words, it was China that aggravated the incident and
23 expanded its scope and magnitude. We will produce
24 witnesses concerning these facts for the considera-
25 tion of the Tribunal in determining the responsibility

1 for these hostilities.

2 This further conflict with the Republic
3 of China was designated as the China Incident and
4 not as the China war. A state of belligerency was
5 not declared nor recognized by either of the parties
6 or in fact by any other power. Actually Generalissimo
7 Chiang Kai-Shek did not declare war upon Japan until
8 the Pacific war broke out in 1941. This should
9 appear, we presume, rather strange to the Occidental
10 mind. The objective of this conflict on our part
11 was to induce the Chinese leaders then in power to
12 reconsider their stand against Japan, thus restoring
13 to a natural and proper state the disturbed Sino-
14 Japanese relations. It, was, however, the attitude
15 assumed by the Communist Party of China that actually
16 gave rise to a decided anti-Japanese movement in the
17 greater part of the Republic. Moreover, Generalissimo
18 Chiang Kai-Shek had come to countenance various
19 activities of the Communists ever since the Sian
20 Incident in which his sensational kidnapping was
21 successfully carried out. The Japanese government
22 regarded this new step on the part of the Generalis-
23 simo as a lamentable deviation more or less short-
24 lived. At the inception, there was neither diplomatic
25 rupture nor disrupted treaty relations between Japan

1 and China. Members of the Chinese army who sur-
2 rendered themselves to our hands were released and
3 those nationals of the Republic of China residing in
4 Japan at that time were not treated as enemy persons
5 but were allowed to pursue their own occupations
6 unmolested. One of our aims in not declaring war
7 with the Chinese Republic was not to restrict the
8 rights and interests of the third powers by the appli-
9 cation of rules of war. Nevertheless the hostilities,
10 against Japan's desire, spread far and wide. Con-
11 sequently it became quite unavoidable that those
12 nationals of neutral Powers who happened to be in the
13 Japanese occupied territories should suffer therefrom
14 to some extent. Hence the conclusion of an agreement
15 known as the ARITA-Craigie agreement between Japan
16 and the United Kingdom.

17 Had there been waged a declared war the
18 question of application of the Nine-Power Treaty to
19 the situation would never have been raised, for
20 treaties would cease to be in force automatically or
21 at least be suspended during hostilities so far as
22 China and Japan were concerned. As a matter of fact,
23 however, declaration of war was not resorted to by
24 the Republic of China or by the Empire of Japan, thus
25 leading to an anomalous situation wherein the question

1 of application of the said treaty became an issue.

2 There had occurred in the Orient five very
3 extraordinary happenings within the period of fifteen
4 years between 1922, when the Nine-Power Treaty was
5 concluded, and 1937 when the China incident broke out.
6 The first of the five items is this: The Republic
7 of China, after the conclusion of the Nine-Power
8 Treaty, made it a national policy to oppose Japan
9 and insult her in every way possible, and illegal
10 boycott of Japanese goods was resorted to generally.
11 China went so far as compiling text books for her
12 public schools so that anti-Japanese sentiments were
13 widely disseminated among the younger generation.

14 The second is: The Communist Internationale
15 which determined its new strategy against Japan during
16 those years, and the Communist Party of China which
17 acted in conformity with the directives of the former;
18 also the acquiescence of the Chiang Kai-Shek regime
19 in the latter's behavior.

20 The third is: The resolution to reduce Chinese
21 forces adopted at the Washington Conference was not
22 only not carried out but, on the contrary, war lords
23 and military cliques in China raised and maintained
24 huge bodies of troops many times greater than those
25 existing before. Besides, they made extensive

1 preparations for war with Japan by importing modern
2 arms and implements of war in large quantities.
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1 The fourth is: The National power of the
2 U.S.S.R. was expanded tremendously since then. The
3 Union of Soviet Socialist Republics not being a party
4 to the Nine-Power Treaty and never under the commitment
5 of the said treaty, made its pressure felt along the
6 entire Sino-Soviet boundaries extending not less than
7 3,000 miles. In fact, a very wide area comprising
8 Outer Mongolia was under the influence of the U.S.S.R.
9 although China still claimed sovereignty.

10 The fifth is: The world economy since the
11 conclusion of the Nine Power Treaty was seen to veer
12 from economic internationalism to national protection-
13 ism.

14 The Nine-Power Treaty is, it must be noted,
15 a treaty without a provision as to expiration. What
16 kind of tales these five happenings tell will be clarified
17 later; evidence to be presented in due course will
18 speak for itself. Here it must be stated, however,
19 that under these circumstances the Nine-Power Treaty
20 had become so unrealistic that its strict application
21 to the situation was impossible. Hostilities were going
22 on, though neither China nor Japan declared war upon
23 the other. In the territory of the Republic of China,
24 whether it was under Japanese occupation or not to
25 carry out the provisions of the said treaty to its

1 very letter was practically impossible. The defense
2 contends that failure strictly to adhere to the treaty
3 in these given circumstances does not necessarily
4 constitute a crime and upon that thesis the defense
5 will prove that the five points above stated indisputably
6 so altered the situations contemplated by the said
7 treaty as to render its effective application nugatory.

8 The prosecution has made it a point to charge
9 the accused as being responsible for economic aggression.
10 The defense will show that there had been no economic
11 aggression in China. Furthermore, we submit that an
12 aggression in the economic sense does not constitute a
13 crime.

14 Now about the assertion of the prosecution
15 concerning narcotic drugs. The prosecution avers that
16 Japan caused an influx of narcotics into China and by
17 this means wanted to crush the war efforts of the Chinese
18 on the one hand and on the other turn the proceeds
19 from the sales of the drug into its war chest. We
20 invite the attention of the Tribunal to the fact that
21 here in Japan we have had special experience in the
22 gradual reduction of opium eaters in Formosa. In
23 Formosa a government monopoly and control of the said
24 drug was set up throughout the years when the island
25 was under our jurisdiction and Japan by such policy

1 put an end to illicit traffic in opium and through these
2 means reduced by degrees the number of addicts.

3 Japan, wherever possible, applied this policy
4 to China where the use of drugs is an ancient and
5 widespread custom principally due to the traffic
6 engaged in by the Western Powers. Concrete facts and
7 figures in this connection will be given as well as
8 to show that proceeds from the sale of opium in China
9 were not utilized by Japan as part of war expenditures.
10 Finally, let it be said that the accused had no connection
11 whatsoever with such matters.

12 Atrocities perpetrated by some Japanese
13 troops in several parts of China, while admittedly most
14 regrettable, are believed to be unduly magnified and
15 in some degree fabricated. We shall endeavor to
16 clarify this matter by showing the true condition. The
17 Japanese government and the responsible commanders made
18 it a policy to prevent such occurrences and where
19 such deplorable facts came to their knowledge, to mete
20 out due punishment to the perpetrators of the crimes.
21 Maintenance of friendly relations with the Chinese
22 people was and still is one of the salient principles
23 of our national policy. It is quite unthinkable that
24 the accused, some of whom were holding key positions
25 in the Tokyo government or entrusted with important

1 expeditionary forces abroad should lightly commit or
2 disregard such misconduct. These charges laid upon some
3 of the accused are, we believe, without foundation and
4 we shall leave no stone unturned to prove that none
5 of the accused ever ordered, authorized or permitted
6 such acts or deliberately and recklessly disregarded
7 his legal duty in this connection.

8 As to the matters related to the Soviet
9 Union, aside from the conspiracy counts, the specific
10 counts are 17, 25, 26, 35, 36, 51 and 52. That these
11 accusations are beyond the pale of this Tribunal has
12 been already pointed out heretofore. Especially the
13 Changkufeng and the Nomonhan Incidents are closed issues
14 between the Powers concerned. This is clear beyond
15 peradventure of doubt by the conclusion of the treaty
16 of neutrality between Japan and the USSR in April 1941.
17 Both the Changkufeng Affair and the Nomonhan Incident
18 resulted from ambiguities concerning the boundaries
19 between Manchuria and the USSR. Needless to say these
20 border incidents do not fall in the category of an
21 aggressive war. The frontiers between Manchukuo and
22 the Soviet Union once defined, the outstanding differences
23 were settled then and there. That the boundaries Japan
24 defended were ultimately right can be verified by the
25 evidence which we shall present. It may be added here

1 that these disputes had no relation to the policy of the
2 Tokyo government or the plans of the Kwantung Army.
3 True circumstances of our despatch of troops on these
4 two occasions will surely demonstrate that Japan had
5 no intention of waging war against the USSR. We shall
6 also show that the Japanese government followed an
7 "absolute pacific policy vis-a-vis Russia."

8 The prosecutors representing the Soviet Union
9 endeavored to establish an aggressive intention on
10 the part of Japan by displaying the 1941 annual program
11 of the General Staff. But let it be remembered that
12 the said program was hypothetical and was not to be
13 put into execution unless the hypothetical war, for
14 which the program was made, materialized. To our mind,
15 any Power may devise such programs without arousing
16 the suspicion of others. This is purely a matter all
17 the fighting services of all nations are duty bound to
18 do. Therefore, we can never conclude from the mere
19 existence of such a program ominous intention by any
20 government. As stated in my earlier remarks, military
21 preparations in themselves will not prove the existence
22 or non-existence of an aggressive intention unless they
23 are compared with similar preparations of other Powers.
24 We will prove that the USSR had a plan of operation
25 in 1936 by which simultaneous attacks upon Germany and

1 Japan were contemplated. After 1939 when the Nomonhan
2 Incident occurred, the Soviet armed forces operating
3 east of Lake Baikal were to be doubled over those
4 maintained by us in Manchuria and Korea. The prosecution
5 also stressed the presence of Japanese reinforcements
6 in Manchuria during 1941. Japan kept some forces in
7 Manchuria after 1941. That is quite true. However,
8 these forces were meant solely for our defense. In
9 support of this assertion there will be no better
10 evidence than the above stated reinforcement plans
11 of the USSR coupled with the maneuvers by that army
12 along the borders of Manchuria and the USSR during
13 that period. Special mention should be here made that
14 tremendous forces of the Soviet Union trespassed across
15 the borders from the south of Hutung in the early part
16 of August 1945 and actually invaded Manchuria. The
17 decision for such an aggression was made as early as
18 February 11, 1945 at Yalta. This was clearly in violation
19 of the neutrality treaty still in force between the
20 USSR and Japan. That our defensive measures adopted
21 at that time in Manchuria were justified will be
22 conclusively shown.

24 We proceed to division V, the Pacific War,
25 involving Counts 1, 4, 5, 7 and 16, Counts 20 to 24
inclusive, Counts 29 to 34 inclusive, Counts 37 to 43

1 inclusive, and Counts 53 to 55 inclusive. For more
2 logical presentation the subject matter of some of the
3 above counts will be treated separately later in
4 greater detail.

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1 There existed before the war close relations
2 between the three Powers, Germany, Italy and Japan.
3 This relationship was by no means made in anticipation
4 of the Pacific War. We shall submit adequate evidence
5 in order to prove this point. The seventh Congress of
6 the Communist Internationale planned its primary
7 destructive objectives against Germany and Japan and
8 consequently they were obliged for their self-pro-
9 tection to cope with this situation. Especially for
10 Japan, this was a really alarming development.
11 Communism was engulfing our neighbor state, China,
12 instigating political and social revolution. Assistance
13 was extended from the Soviet Union in the shape of
14 Russian technique of revolution as well as personal
15 emissaries. These activities have been in progress ever
16 since 1923 when Dr. Sun Yat-sen and M. Joffe issued a
17 joint declaration expressing mutual sympathy between
18 the two parties. This was an extremely dangerous
19 situation for the well being of the Japanese Empire.
20 Thus followed the joint defense against communism by
21 Japan, first with Germany and then with Italy. The
22 proposal of Joint defense of China and Japan against
23 communistic activities was enunciated in three prin-
24 ciples by Mr. HIROTA, Foreign Minister. These
25 principles were included later in the KONOYE statement

1 in 1938. In defending against the menace of communism,
2 since the interests of Germany and Japan were identical,
3 the two Powers concluded an agreement on November 25,
4 1936, known as the Anti-Comintern Pact. Needless to
5 say, this Pact was not made in anticipation of the
6 Pacific War. In Article 2, the Pact stipulated that,
7 "The High Contracting Parties will jointly invite
8 third States whose internal peace is threatened by the
9 subversive activities of the Communist Internationale
10 to adopt defensive measures in the spirit of this
11 agreement, or to take part in the present agreement."
12 Again, the so-called secret understanding attached to
13 this instrument never aimed at aggression against any
14 third party. The understanding merely provides that
15 the parties will not take such measures as may
16 lighten the burden of the USSR if and when one of the
17 parties should become the object of an unprovoked
18 attack by it, and is entirely negative in nature. In
19 1939 negotiations were entered into in an attempt to
20 strengthen the Anti-Comintern Pact, but they were
21 abruptly ended by the unexpected conclusion of the
22 German-Soviet non-aggression treaty. These negoti-
23 ations did not have for their object an unfriendly
24 attitude toward Great Britain and America.
25

The Tri-Partite Pact between Japan, Germany

1 and Italy was given wide publicity, but its stipula-
2 tions are quite simple. War between Japan and America
3 was also never made its object. Rather, it was the
4 very avoidance of war between America and Japan that
5 was contemplated in the agreement. The evidence will
6 prove that there was no effective collaboration between
7 Germany and Japan and Italy and will emphasize that
8 Germany urged Japan to enter the war against Russia.
9 This Japan refused to do.

10 Germany sought the assistance of Japan in
11 their war against Britain. Japan refused to cooperate
12 with Germany, but acted independently. Germany negoti-
13 ated the Tri-Partite Pact to keep the United States out
14 of the European War. This was not accomplished. The
15 evidence will show that General Marshall stated in his
16 annual report to the President of the United States
17 during the war that there was no military cooperation
18 between the two countries, that is, Germany and Japan.

19 Japan's planned economy and military and
20 naval preparations prior to the fall of 1941 were de-
21 fensive in nature and also not undertaken in anticipa-
22 tion of the Pacific War. Comparison of the British
23 and American navies and their programs with that of
24 Japan, as well as the study of the annual programs of
25 the Japanese naval command, will conclusively

disclose per se the latter's non-aggressive purpose.
The prosecution asserts that the Japanese Navy constructed in the mandated territories fortresses and established bases of operations in violation of the terms of the mandates and treaties. But this, too, we maintain is without foundation. A fortress must be provided with specific defensive facilities against attacks from land, sea and air, while a base of operations is incomplete unless it is equipped with supply facilities for providing the fleet in action. We shall show that what were installed actually were either communication facilities of peaceful nature or temporary establishments for naval maneuvers, all of which were permissible.

Much of the atrocities and cruelties alleged to have been committed by Japanese forces against prisoners of war did not come to the knowledge of many of these accused until they were disclosed in this Tribunal. Others had no authority to restrain them, even though they were aware of the fact. Again, others did their best to restrain and punish the perpetrators of such crimes. Evidence will show that there was neither the opportunity nor available means to stop them before the crimes were committed. We shall submit evidence that no defendant ever formulated

1 a common plan, or ordered, or authorized or permitted
2 atrocities or deliberately and recklessly disregarded
3 his legal duty to take steps to prevent observance of
4 the laws and customs of war in this respect.
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1 Coming now to the causes of the Pacific
2 War itself, a situation inviting the closest and
3 most impartial scrutiny, we shall prove that it en-
4 sued because of the supreme necessity of Japan to
5 invoke the right of self defense. With your permis-
6 sion, let us remind this Honorable Tribunal that
7 since 1937 Japan was unwittingly involved in large-
8 scale hostilities tantamount to war with China, but
9 which were treated by the world at large as being
10 "short of war." We naturally expected that third
11 Powers would recognize this peculiar situation. In
12 fact, Great Britain did so in the joint declaration
13 with the Japanese Government dated July 22, 1939,
14 issued as a result of the Tientsin Incident and de-
15 clared that His Majesty's Government fully recognized
16 the actual situation in China where hostilities on
17 a large scale are in progress. In what way the
18 Washington Government regarded this situation we
19 were not sure, but suddenly on July 26, 1939, noti-
20 fication of abrogation of the Treaty of Commerce
21 and Navigation, a firm basis of the trade relations
22 between the two countries since 1911, was received.
23 Misunderstanding began to grow. From that time on
24 the United States brought to bear upon Japan every
25 kind of pressure and intimidation. The first was

1 economic pressure. The second was the help extended
2 to the Chiang Kai-shek regime with which Japan was in
3 a life and death struggle. The third was the prog-
4 ress of encirclement by the United States, Great
5 Britain and the Dutch East Indies; in concert with
6 China a ring was thrown and tightened by them around
7 Japan. These three steps after 1939 were adopted
8 one by one, their intensity increasing in vigor as
9 time went on. A typical example of economic pres-
10 sure thus brought to bear upon us Japanese will be
11 recited here. In December 1939 the moral embargo
12 was extended in scope, and in addition, aircraft and
13 its equipment and instruments and machinery for con-
14 struction of aircraft and for refining gasoline were
15 added to the prohibited list. During July 1940 the
16 Washington Government put an embargo on scrap iron.
17 Considering the system of iron production then pre-
18 vailing in Japan, scrap iron was an item of crucial
19 importance. A heavy blow was thus dealt to this key
20 industry of Japan. In August of the same year, the
21 United States further put restrictions on the export
22 of gasoline for aviation purposes. Upon the whole,
23 Japan's yearly need of oil was estimated at
24 5,000,000 tons, the very minimum required for the
25 nation's subsistence including her national defense.

1 Since its annual home production of this fuel was
2 not more than 300,000 tons, this deficit had to be
3 made good with imports from abroad. By this time,
4 the only available source was the Dutch East Indies.
5 Accordingly, a mission headed by Mr. I. KOBAYASHI,
6 Minister for Commerce and Industry, was sent there
7 and later Ambassador YOSHIKAWA was ordered to con-
8 tinue the thread of negotiations with the Dutch East
9 Indies authorities at Batavia. But all these efforts
10 came to naught, because the leaders of the Dutch
11 Indies were working in close concert with America
12 and Great Britain. The same kind of obstacles were
13 also interposed by the authorities of French Indo-
14 China and Siam, and our normal and necessary imports
15 of rice and rubber were thus hampered.

16 Now about the second point, assistance
17 extended to the Chiang Kai-shek regime. The United
18 States granted on November 20, 1940, an additional
19 loan of \$50,000,000 to the Chungking Government,
20 apparently in retaliation for the treaty between
21 Japan and the Wang Ching-Wei regime which was con-
22 cluded the same day. Moreover, the United States
23 authorities made it known that a further sum of
24 \$50,000,000 was contemplated, to be offered for use
25 in stabilizing Fapi, the Chinese currency. Following

1 this step, the London Government also made it known
2 that a grant of L1,000,000 would be forthcoming.
3 These are but a few of the examples, to say nothing
4 of the continuous supply of materials to Chungking
5 by the London Government. As soon as the rainy
6 season came to a close that year, Great Britain re-
7 opened the Burma Road to traffic and directly for-
8 warded arms and munitions to the Chiang regime.
9 In addition, the French Indo-China route was being
10 utilized by the other nations as a line of supply
11 to the Chungking Government. In 1941 application
12 of the Lend Lease Act was extended to China. We
13 shall produce direct evidence of these facts.

14 Here we come to the third point, an iron
15 ring of encirclement thrown around Japan by the
16 several powers. In December 1940, the flower of
17 the American Pacific Fleet was concentrated in the
18 Hawaiian waters, constituting a demonstration against
19 Japan. The British Government on November 13 of the
20 same year established at Singapore the headquarters
21 of the Far Eastern Command, all of Malaya and Burma
22 as well as Hongkong coming within its orbit. That
23 government also began to undertake a formidable
24 military expansion, a system of organizing British
25 possessions in East Asia into a close unit with

1 Australia and New Zealand. Conferences participated
2 in by representatives of America, Great Britain, the
3 Dutch East Indies and the Chiang Kai-shek regime
4 took place in rapid succession during those days.
5 A parley in Manila, held in April 1941, among the
6 British Commander-in-Chief in the Far East, the
7 United States High Commissioner in the Philippines,
8 the United States Commander-in-Chief of the Asiatic
9 Fleet and the Dutch Foreign Minister, attracted our
10 attention. Further, military councils were held
11 between the delegates of Great Britain and General-
12 issimo Chiang Kai-shek at Singapore about the middle
13 of June. Particulars of these parleys will be dis-
14 closed by evidence.

15 Reacting to these numerous manifestations,
16 the Government of Japan hastened to take steps in
17 order to avoid the imminent calamities. The Amba-
18 sador of Japan at Washington was requested since the
19 spring of that year to do his best so that the de-
20 plorable tension might be ended and relations between
21 America and Japan smoothed out. Parleys between the
22 United States Chief Executive and the Japanese Am-
23 bassador, negotiations between the Secretary of
24 State and the Japanese Ambassador were incessantly
25 held, these sessions reaching several score in

1 number. The Tokyo Government exerted every effort
2 in order to effect a peaceful solution of all out-
3 standing differences. The Japanese Premier offered
4 to meet and negotiate directly with the Chief Execu-
5 tive of the United States somewhere in the midst* of
6 the Pacific in an attempt to settle the matter
7 peacefully once and for all. Another envoy was
8 dispatched to Washington to this end. A minister-
9 ial change en bloc was undertaken in the middle of
10 July to carry through successfully the Japan-America
11 negotiations, this being the last final step that an
12 independent sovereign state could take for the purp-
13 ose of diplomacy. However, all of these efforts were
14 of no avail. On July 25, 1941, the government at
15 Washington took steps to freeze all our assets
16 within the United States. This resulted from a mis-
17 construction of Japan's peaceful sending of troops
18 to French Indo-China. Britain and Dutch East
19 Indies also followed suit immediately, although
20 at the time treaties of commerce and navigation were
21 still in force between Japan and Great Britain and
22 the Netherlands, so that the freezing of Japan's
23 assets by Great Britain and the Netherlands was in
24 violation of those treaties.
25

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Dr. KIIYOSE.

4 DR. KIIYOSE: With your permission, let us again
5 remind this Honorable Tribunal that Japan was quite
6 unable to keep its population alive by the products
7 raised within the Empire alone. Japan had to obtain
8 necessary commodities by foreign trade. By the freez-
9 ing of assets by the United States, Britain and the
10 Dutch East Indies, more than half of Japan's foreign
11 trade disappeared and the toil of eighty years' stand-
12 ing was wiped out. These were the results of the
13 foregoing steps legally or illegally taken by America,
14 Great Britain and the Netherlands. The inalienable
15 right to live was deprived from the Japanese people.
16 Just about that time, America at last put an embargo
17 upon oil by an executive order issued on August 1st,
18 making good the veiled notification given to Ambassador
19 NOMURA on July 24th. Japan's navy was thus to lose
20 mobility after her oil in stock was exhausted; solution
21 of the China Incident was made practically impossible;
22 Japan's defense was emasculated. Hereupon the stark
23 question of self-defense presented itself before the
24 whole nation as a cold and hard fact. This demanded
25 immediate solution.

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1 In short, fundamental factors justifying the
2 exercise of the right of self-defense were entirely
3 complete by that time. Notwithstanding, Japan did
4 not exercise this right at that time. On the contrary,
5 it was still willing to bear the unbearable, endeavor-
6 ing to the utmost to eliminate somehow factors that
7 might lead to a casus belli. Its strenuous efforts
8 to this end will be fully proved by evidence, at once
9 strong and convincing.

10 Japan's will to peace, Japan's sincere efforts
11 to attain peaceful settlement did not bear fruit. Amer-
12 ica's note on November 26, 1941, made it finally crystal
13 clear that not one single factor contributing to a casus
14 belli could be settled by pacific means. Thereupon,
15 the Japanese Government, after threshing out the opin-
16 ion and observations of its various departments, and
17 after the utmost care and deliberation, was forced
18 at last to resolve upon recourse to the right of self-
19 defense. This was on December 1st. However, even
20 after the actual date on which the use of this right
21 was decided upon, the war order issued contained an
22 explicit proviso canceling all naval and military
23 operations if a compromise should be effected between
24 Japan and the United States. In that case, the com-
25 bined fleet was to come back to home waters.

1 The prosecution is of the opinion that Japan
2 was defective in communicating her intention to fight
3 and that this must constitute a crime. The defense
4 maintains the following facts: In the first place,
5 due explanation will be developed concerning the time
6 in which the Japanese note was handed to the United
7 States together with particulars about this diplomatic
8 procedure. On December 6, 1941, Washington time, the
9 Japanese Foreign Ministry sent a dispatch to the
10 Japanese Ambassador at Washington intimating that a
11 note in English to be addressed to the State Department
12 was ready.

13 Though the time in which the note in question
14 was to be presented would be some time thereafter, they
15 should be careful in the preparation of the document
16 and be always in readiness to handle any matters in
17 this connection, the dispatch instructed. All these
18 telegrams were intercepted by the United States. Now,
19 that note comprised fourteen parts in all. Our Embassy
20 at Washington was in receipt of thirteen parts on the
21 evening of December 6. The United States intercepted
22 that part of the dispatch by 9:30 p.m. December 6, and
23 the President gave them personal perusal. The last
24 part was also intercepted on December 7. About the
25 time when the said part was received, another dispatch

1 arrived at the Embassy indicating the time at which
2 the important note should be delivered; that time was
3 one o'clock in the afternoon of the same day. Where-
4 upon, Ambassador NOMURA hastened to make an engagement
5 with the Secretary of State, Mr. Cordell Hull, to meet
6 him at one o'clock p.m. Had the note been delivered
7 as was intended at one o'clock p.m. December 7, 1941,
8 the delivery would have preceded the attack at Pearl
9 Harbor, which took place at 25 minutes past 1:00 p.m.,
10 Washington time. But the Embassy's deciphering and
11 typing took so much time that, as the prosecution
12 pointed out, Ambassador NOMURA was unable to arrive at
13 the State Department until 2:00 p.m. and handed the
14 note at 2:20 p.m. If the Ambassador could have deliv-
15 ered the note on his arrival at the State Department,
16 the time of delivery would have been thirty-five min-
17 utes after the attack at Pearl Harbor, but as the Amba-
18 sador was kept waiting for twenty minutes, the delivery
19 of the note was fifty-five minutes behind time.

20
21 As the Tokyo Government had sent the greater
22 part of the dispatch the night before, and the remain-
23 ing part was sent so as to be received early in the
24 morning in order that the note should safely be deliv-
25 ered prior to 1:00 p.m. December 7th, that is, before
the commencement of military operations, and if the

1 routine business of the Embassy had gone smoothly,
2 notification would have been made as was anticipated,
3 some time before the attack. But owing to circumstances
4 beyond the control of Tokyo, the delivery of the note
5 was delayed as above stated. These facts the defense
6 will prove in due course.

7 Besides, we shall also try to prove the fol-
8 lowing facts with a view to providing this Honorable
9 Tribunal with materials which we hope will be useful
10 for its decision whether the attack on Pearl Harbor
11 was a surprise attack or not. The State Department
12 authorities considered Japan's note to the United States
13 dated November 20, 1941 as the last one, and after Nov-
14 ember 26 the whole matter was thrown into the lap of
15 the fighting services. On the morning of November 27,
16 1941, the highest official of the State Department
17 stated that the matter of relations with Japan was in
18 the hands of the Army and Navy. On the same day the
19 Chief of Naval Operations and the Chief of Staff sent
20 war warnings to the forces in Hawaii.

21 As previously stated, the American authorities
22 deciphered the Japanese note, excepting the last part,
23 by the evening of December 6th, and this last part was
24 deciphered December 7th early in the morning, the Presi-
25 dent being in receipt of it at about 10:00 a.m. the same
day.

1 The United States Departments of War and Navy
2 were both in possession of intelligence suggesting that
3 diplomatic rupture was at hand, and by conjecture that
4 an imminent attack was to be anticipated. The Hawaiian
5 Department was also in possession of an instruction
6 that the policy to induce Japan to commit the first
7 overt act should not be construed as restricting the
8 Department to a course of action that might jeopardize
9 its defense. Also it was directed to undertake
10 reconnaissance prior to Japanese hostile action. No
11 wonder that between 6:33 and 6:55 a.m. December 7
12 (Hawaiian time) the U. S. Navy shot and sank a Japanese
13 midget submarine in the contiguous waters. We are
14 adducing the above facts in order to show that the
15 Pearl Harbor attack at 7:55 a.m. on December 7
16 (Hawaiian time) did not come as a surprise attack.

17 It is contended by the prosecution that the
18 Japanese note in question does not amount to a declara-
19 tion of war with the reasons assigned as stipulated in
20 Article I of the Hague Convention III. In interpreting
21 a document, circumstances giving rise to it must be
22 weighed carefully to say nothing of its letter. More-
23 over, a document of this nature must always be studied
24 as a whole, and not judged only by its wording and
25 sentences. In the political atmosphere prevailing at

1 that time, some of the responsible American authorities
2 observed, as was stated before, that after November 26
3 matters were put into the hands of the fighting services.
4 The Japanese note is a diplomatic document of considerable
5 length consisting of not less than 2,400 words, which
6 must be treated as a whole. We find in the Japanese
7 note the following passages criticizing the American
8 stand toward Japan and making it clear that there was
9 no means left for Japan but to resort to arms. After
10 confessing the difficulty the Japanese Government
11 experienced in understanding the American attitude,
12 the note observes: (I) "The peace of the world may
13 be brought about only by discovering a mutually acceptable
14 formula through recognition of the reality of the
15 situation and mutual appreciation of one another's
16 position. An attitude such as ignores realities and
17 imposes one's selfish views upon others will scarcely
18 serve the purpose of facilitating the consummation
19 of negotiations." (II) "The American Government,
20 obsessed with its own views and opinions, may be said
21 to be scheming for the extension of the War."
22 (III) "Whereas the American Government, under the
23 principles it rigidly upholds, objects to settling
24 international issues through military pressure, it is
25 exercising in conjunction with Great Britain and other

1 nations pressure by economic powers. Recourse to such
2 pressure as a means of dealing with international
3 relations should be condemned as it is at times more
4 inhuman than military pressure." (IV) "All the items
5 demanded of Japan by the American Government....ignore
6 the actual conditions of China, and are calculated to
7 destroy Japan's position as the stabilizing factor in
8 East Asia. This demand of the American Government,
9 falling as it does in line with its above-mentioned
10 refusal to cease from aiding the Chungking Regime,
11 demonstrate clearly the intention of the American
12 Government to obstruct the restoration of normal rela-
13 tions between Japan and China and the return of peace
14 to East Asia."

15 Briefly, the above parts of the note make plain
16 in the position of the Japanese Government, being deprived
17 of the hope of further negotiation, that it was forced
18 to have recourse to the last final step for the very
19 sake of its self-defense. On the evening of December 6,
20 1941, even upon reading thirteen parts of the Japanese
21 note, the President said: "This means war."

22 At the end of the note it was pointed out that
23 "the earnest hope of the Japanese Government to adjust
24 Japanese-American relations and to preserve and promote
25 the peace of the Pacific through cooperation with the

1 American Government has finally been lost. The
2 Japanese Government regrets to have to notify hereby
3 the American Government that in view of the attitude of
4 the American Government, it cannot but consider that it
5 is impossible to reach an agreement through further
6 negotiations." This was tantamount to severance of
7 diplomatic relations and in the light of the tense
8 situation then existing is unmistakable notification of
9 Japan's intention of commencing war.

10 Because of necessary limitations, only some
11 of the most important issues have been touched upon in
12 my present statement. There still remain numerous
13 others but these have been deferred for treatment in
14 the opening statements to be made later at the inception
15 of several divisions of the defense case as I have
16 previously outlined.

17 Mr. President, and Members of this Tribunal:
18 I hereby beg your permission to express my sentiment
19 of profound thanks for the generosity and patience with
20 which you have given a fair hearing to the lengthy
21 remarks I have made on behalf of the accused. We shall
22 now go forward and present evidence of importance in
23 great abundance. It is our firm belief that it will be
24 worthy of your esteemed credence and consideration.

25 Truth we all here seek is not a matter of

1 proving that one party is entirely right and the other
2 absolutely wrong. Truth in the human sense often
3 envelops itself with human frailties, but we must
4 plumb, even though painfully, but with impartiality,
5 the deeper causes that prompt modern global wars. The
6 way to peace must eradicate the vices underlying the
7 present world. Whether the tragedy of modern wars
8 might be due to racial prejudice or unequal distribu-
9 tion of natural resources or mere misunderstanding
10 between governments or to the cupidity and covetousness
11 of the favored or the less happy peoples, the cause
12 must be ferreted out in the interests of humanity.

13 By finding the true and deeper cause or causes
14 of this war and incidents during the period indicated
15 by the prosecution, the guilt or innocence of the
16 accused can be fairly determined, serving at the same
17 time to guide the present and future generations in the
18 direction and endeavor for a lasting world peace.

19 THE PRESIDENT: Mr. Tavenner.

20 MR. TAVENNER: Mr. President, and Members of
21 the Tribunal: The prosecution desires to point out
22 that the opening statement by Dr. KIYOSE offends in
23 several additional instances the principles announced
24 by the Tribunal to the effect that matters heretofore
25 argued should be deleted. They are as follows:

1 page 3, personal responsibility for criminal acts per-
2 formed by individuals acting on behalf of the state;
3 the last half of page 25, interpretation of the Potsdam
4 Declaration; page 26, the construction of non-criminality
5 of aggressive warfare, or, rather, the contention of non-
6 criminality of aggressive warfare.

7 THE PRESIDENT: Paragraphs 17 to 20, inclusive,
8 seem to me to cover the lot without regard to the pages.

9 MR. TAVENNER: That disposes, then, of those
10 matters.

11 Now, we are of the opinion that glaring examples
12 appear in the opening statement of recital of alleged
13 facts which are irrelevant to the issues charged. We
14 will endeavor to present proper objections when the
15 evidence is introduced, and we are satisfied the Tribunal
16 will ignore, for the present, those matters which appear
17 on their face to be improper.

18 THE PRESIDENT: Very largely it is a statement
19 of the law, or purports to be. It is certainly more
20 than a statement of fact. The doctrine of individual
21 responsibility can never be a question of fact, as Dr.
22 KIYOSE asserts.

23 We are wondering how much of the second part
24 is objectionable for the same reasons.

25 MR. TAVENNER: Yes.

1 THE PRESIDENT: We told Mr. KIYOSE to omit
2 all his arguments of law that had been put already,
3 but he did not do so. The second part of this opening
4 may be put with the same disregard of our instructions.
5 We want to be sure that it isn't.
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1 MR. TAVENNER: I think each one of the
2 objections which I referred to in the second document
3 relates to matters which have been argued.

4 THE PRESIDENT: I have not read the second
5 part. That may be.

6 MR. TAVENNER: There is a possibility that
7 my statement may not be correct as to the second one
8 relating to conspiracy, but I think that has been
9 covered also.

10 THE PRESIDENT: The opening statement must
11 be a statement of the evidence intended to be adduced
12 and not arguments on the law.

13 MR. TAVENNER: I would now like to refer to
14 another objection to the opening statement made by
15 Dr. KIYOSE. We object to those statements made in the
16 course of that opening statement which are not susceptible
17 of proof and which are beyond a proper defense of the
18 accused. I refer particularly to that class of state-
19 ments which appears on page 40 in which the statement
20 was made: "Maintenance of friendly relations with the
21 Chinese people was and still is one of the salient
22 principles of our national policy." It is our view
23 that could have no purpose except a political one.
24

25 THE PRESIDENT: It is what it was that
matters, not what it is now. It may be susceptible of

1 proof; I would not say offhand.

2 MR. TAKAYANAGI: Mr. President and Members
3 of the Tribunal:

4 With the permission of the Tribunal, we pro-
5 pose to discuss the law of the Charter with a view to
6 refuting seriatim the interpretations placed upon it
7 by the Chief of Counsel in his opening statement. As
8 far as possible we shall follow the order in which
9 the Chief of Counsel developed the thesis of the
10 prosecution and divide our discussion into the follow-
11 ing eight sections:

- 12 1. The Potsdam Declaration and the law of
13 the Charter.
- 14 2. Conspiracy.
- 15 3. War of Aggression.
- 16 4. War in violation of treaties, etc.
- 17 5. Murder.
- 18 6. "Conventional" war crimes.
- 19 7. Personal responsibility.
- 20 8. The nature and purpose of the new
21 doctrine of international law proposed by the prosecu-
22 tion.

23 THE PRESIDENT: Dr. TAKAYANAGI, all those
24 matters that you refer to are outside the proper scope
25 of an opening of the defense' evidence.

1 MR. TAKAYANAGI: With great respect I want
2 to draw the attention of the Tribunal to three points.

3 THE PRESIDENT: In your closing address you
4 may, perhaps, refer to all of them. It was necessary
5 for the prosecution in their opening to explain the
6 law to some extent, and you have been permitted to
7 combat what the prosecution claimed was the law on
8 two occasions. Now you are attempting to reopen the
9 questions of law at a stage when it is not permissible.
10 In your concluding address we shall hear you fully on
11 the law as far as necessary. Let it be clearly under-
12 stood by all that we are not shutting out a single
13 argument that the defense can produce, but we are
14 preventing unnecessary repetitions of argument and
15 arguments at the wrong stage of the case. Now we
16 are not going to allow you to continue if you have
17 infringed any direction of the Tribunal in the state-
18 ment that you have prepared.

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1 MR. TAKAYANAGI: I want to say just a few
2 words. First, the Chief of Counsel in his opening
3 statement was given an opportunity to elucidate in
4 a comprehensive manner the law of the Charter as the
5 prosecution understood it. It is not only require-
6 ments of natural order as we conceive it but a
7 matter of fair play that the accused be allowed to
8 elucidate the law of the Charter as a whole as the
9 defense understands it at the beginning of the defense.

10 THE PRESIDENT: I will state the matter again
11 in case you did not hear me before. The defense have
12 already been allowed to state their view of the
13 Charter as fully as Mr. Keenan stated his view.

14 MR. TAKAYANAGI: Another point is, the Chief
15 of Counsel's elucidation of the law of the Charter,
16 like a piece of art, constitutes an organic whole
17 inspired by a definite philosophy. The legal questions
18 raised by the defense so far were on certain specific
19 aspects of the law only and the defense has not yet
20 had an opportunity to state its views on the legal
21 arguments of the prosecution as a whole and especially
22 on its philosophy inspiring them all.

23 THE PRESIDENT: Probably without realizing
24 it you are endeavoring to infringe the law of the
25 Charter. There is no provision in the Charter for

1 what you are trying to do now. The Charter now
2 confines you to an opening statement and you are not
3 making one. While professing to uphold the Charter,
4 you are disregarding it. If what you propose to read
5 to us is not an opening statement, we are not going
6 to listen to it.

7 MR. TAKAYANAGI: We will omit all those
8 parts which have been brought before and we will
9 bring out only those parts which have not been
10 touched upon or which may be looked at in a new
11 light until we shall prepare the matter until
12 tomorrow morning. Also, I should like to draw the
13 attention of the Tribunal that it is the honest
14 desire of the defendants on whose behalf I propose
15 to make this statement that the interpretation of
16 the Charter be presented to the Tribunal not
17 at the summation but at the very beginning so that
18 the fundamental legal questions which are pertinent
19 to their destiny but also have a far-reaching effect
20 in international law and may become a precedent for
21 future generations be fully and carefully considered.

22 THE PRESIDENT: Dr. TAKAYANAGI, the procedure
23 laid down in the Charter is binding upon us. That
24 procedure is that at this stage we hear an opening
25 statement by the defense. We are confined to that and

1 so are you. We will hear an opening statement;
2 that is, a statement of the evidence you intend to
3 adduce.

4 Doctor, we think that we should adjourn
5 now -- it is nearly four o'clock -- to enable you
6 to reconsider what you have written and with a view
7 to your confining what you are going to say to an
8 opening statement in the proper sense. I repeat
9 again that at a proper stage we will hear every
10 argument of law that you have to present so far as
11 you have not presented it. In your concluding
12 address you may refer to it fully but not now. We
13 will adjourn--

14 DR. KIYOSE: Mr. President, I wish it to
15 be understood that Dr. TAKAYANAGI is not speaking
16 for all defendants and that he is speaking only for
17 his own client.

18 THE MONITOR: Although Dr. TAKAYANAGI has
19 stated that he was speaking about the desire of all
20 accused, that is not the case. He does not represent
21 all accused.

22 May I state that there are several additional
23 defendants who do not participate in the opening
24 address which I made. There are more accused who
25 have expressed -- who have disclosed the intention

1 not to join in Dr. TAKAYANAGI's opening statement
2 than as to mine.

3 MR. TAKAYANAGI: Dr. KIYOSE said I was not
4 speaking on behalf of all defendants. I was speaking
5 for the defendants DOHIHARA, HIRANUMA, HIROTA, KAYA,
6 MATSUI, MUTO, OKA, OSHIMA, SHIGEMITSU, SHIMADA,
7 SHIRATORI, SUZUKI, TOGO and UMEZU.

8 THE PRESIDENT: No matter whom you repre-
9 sent, you are still confined to an opening statement
10 in the true sense.
11

12 We will adjourn until half-past nine
13 tomorrow morning.

14 (Whereupon, at 1550, an adjournment
15 was taken until Tuesday, 25 February 1947,
16 at 0930.)
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